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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 175

TALMADGE RALEY, JOSEPH STERN AND EMMETT CALVIN BROWN, APPELLANTS,

vs.

STATE OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED JULY 16, 1938

JURISDICTION POSTPONED OCTOBER 20, 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 175

TALMADGE RALEY, JOSEPH STERN AND EMMETT CALVIN BROWN, APPELLANTS,

vs.

STATE OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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[fol. 1]

IN THE COURT OF COMMON PLEAS OF HAMILTON COUNTY, OHIO

DOCKET AND JOURNAL ENTRIES

THE STATE OF OHIO

vs.

TALMADGE RALEY

PRECIPE FOR WARRANT FILED AND WARRANT ISSUED

Indictment for Contempt.

Reported and filed 26 day of June 1953.

Cincinnati, Ohio 1953 Jun 29

I have the within named TALMADGE RALEY in my custody and have served him with copy of indictment.

Serving Indictment	$ .50
Mileage	.16
Serving Warrant on Indictment	1.00
Mileage	.16
Total	$1.82

Dan Tehan, Sheriff
/s/ FRANK ALF, Deputy

1953 Jun 29	Min. 982. Cash Bond $500 given—Rose Raley Surety.
1953 Jul 6	Min. 606. Plea of not guilty entered—Bond $500.
1953 Jul 6	Min. 603. Cash Bond $500 given—Rose Raley Surety.
1953 Aug 5	Min. 698. Counsel Assigned Chester R. Shook, Morse Johnson, Milton H. Schmidt and Louis C. Capelle.

1953	Aug	17	Motion to withdraw Plea of Not Guilty filed.
1953	Sep	8	Motion to Quash filed.
1953	Sep	8	Min. 796. Entry authorizing Defendant to withdraw Plea of not guilty.
1953	Oct	14	Memorandum of Authorities in support of Motion to quash.
1953	Oct	14	Indictments filed.
1953	Nov	30	Min. 817. Entry overruling Motion to Quash —Deft. excepts.
1953	Dec	3	Plea in abatement filed.
1953	Dec	10	Min. 876. Entry overruling Plea in abatement—Deft. excepts.
1953	Dec	10	Demurrer filed.
1953	Dec	10	Min. 877. Entry overruling Demurrer. Deft. excepts.
1953	Dec	15	Min. 899. Plea of not guilty entered—Bond $.....
1953	Dec	15	Min. 899. Waiver of trial by Jury entered.
1953	Dec	15	Min. 900. Application for O. S. filed and allowed.
1953	Dec	15	John Bean O. S. 11 Days $8.00.
1953	Dec	15	Min. 901. Cause progressed 1st Day. Testimony adduced in part, and continued to Friday, Dec. 18, 1953, 10:00 A.M.
1953	Dec	18	Min. 916. Cause progressed 2nd Day, Testimony adduced in full, and continued to Monday, Dec. 21, 1953, 10:00 A.M.
1953	Dec	21	Min. 922. Cause heard and Submitted. Cause continued to Monday, Dec. 28, 1953, 10:00 A.M. Deft. released same bond.

1953	Dec	22 Samuel Devine Sw 1 Day 220 miles—Gordon Renner sw 1 Day.
1953	Dec	22 Edwin Hammock sw 1 Day 220 miles—Sidney Isaacs sw 2 days 220 miles.

[fol. 2]

1953	Dec	28 Min. 935. Court finding Defendant guilty as charged.
1953	Dec	28 Min. 936. Sentence—County Jail Ten Days —Fine $500.00 and costs.
1953	Dec	28 Min. 938. Entry granting Stay of Execution until January 7, 1954, and bond set at $1000.00.
1953	Dec	28 Min. 933. Stay of Execution bond given—Rose Raley Surety.
1953	Dec	30 Motion for a new trial filed.
1953	Dec	30 Motion in arrest of Judgment filed.
1954	Jan	4 Costs as to Talmadge Raley—Amt. $57.07.
1954	Jan	7 Min. 618. Entry granting additional Stay of Execution to and including January 28, 1954, same bond.
1954	Jan	19 Min. 670. Entry overruling Motion for new trial. Deft. excepts.
1954	Jan	19 Min. 670. Entry overruling Motion in arrest of Judgment—Deft. excepts.
1954	Jan	19 Min. 672. Entry consolidating cases for purposes of Appeal.
1954	Jan	19 Notice of Appeal filed. $2.50 fees paid.
1954	Jan	19 Praecipe for transcript of Docket and Journal entries filed.

[fol. 3]

IN COURT OF COMMON PLEAS

DOCKET AND JOURNAL ENTRIES

THE STATE OF OHIO

vs.

JOSEPH STERN

PRECIPE FOR WARRANT FILED AND WARRANT ISSUED

Indictment for Contempt.

Reported and filed 26 day of June 1953.

Cincinnati, Ohio 1953 Jun 29

I have the within named JOSEPH STERN in my custody and have served him with copy of indictment.

Serving Indictment	$ .50
Mileage	.16
Serving Warrant on Indictment	1.00
Mileage	.16
Total	$1.82

Dan Tehan, Sheriff
/s/ FRANK ALF, Deputy

1953	Jun 29	Min. 982. Cash Bond $500. given—Jean Stern Surety.
1953	Jul 6	Min. 606. Plea of not guilty entered—Bond $500.
1953	Jul 6	Min. 603. Cash Bond $500. given—Jean Stern Surety.
1953	Aug 5	Min 698. Counsel assigned Chester R. Shook, Morse Johnson, Milton H. Schmidt and Louis Capelle.
1953	Aug 17	Motion to withdraw Plea of Not Guilty filed.

1953	Sep 8	Motion to Quash filed.
1953	Sep 8	Min. 796. Entry authorizing Defendant to withdraw Plea of not guilty.
1953	Oct 14	Memorandum of Authorities in support of Motion to quash.
1953	Oct 14	Indictments filed.
1953	Nov 30	Min. 817. Entry overruling Motion to Quash —Deft. excepts.
1953	Dec 3	Plea in abatement filed.
1953	Dec 10	Min. 876. Entry overruling Plea in abatement—Deft. excepts.
1953	Dec 10	Demurrer filed.
1953	Dec 10	Min. 877. Entry overruling Demurrer. Deft. excepts.
1953	Dec 15	Min. 899. Plea of not guilty entered—Bond $..... .
1953	Dec 15	Min. 899. Waiver of trial by Jury entered.
1953	Dec 15	Min. 900. Application for O. S. filed and allowed.
1953	Dec 15	John Bean O. S. 11 Days $8.00.
1953	Dec 15	Min. 901. Cause progressed 1st Day. Testimony adduced in part, and continued to Friday, Dec. 18, 1953, 10:00 A.M.
1953	Dec 18	Min. 916. Cause progressed 2nd Day, Testimony adduced in full, and continued to Monday, Dec. 21, 1953, 10:00 A.M.
1953	Dec 21	Min. 922. Cause heard and Submitted. Cause continued to Monday, Dec. 28, 1953, 10:00 A.M. Deft. released same bond.
1953	Dec 22	Samuel Devine Sw. Gordon Renner sw.
1953	Dec 22	Edwin Hammock sw. Sidney Isaacs sw.

[fol. 4]

1953 Dec 28	Min. 934. Court finding Defendant guilty as charged.
1953 Dec 28	Min. 934. Sentence—County Jail-Ten Days. Fine $500.00 and costs.
1953 Dec 28	Min. 935. Entry granting Stay of Execution until January 7, 1954 and setting bond at $1000.00.
1953 Dec 28	Min. 933. Stay of Execution bond given—Jean Stern Surety.
1953 Dec 30	Motion for a new trial filed.
1953 Dec 30	Motion in arrest of Judgment filed.
1954 Jan 4	Costs as to Joseph Stern—Amt. $56.21.
1954 Jan 7	Min. 618. Entry granting additional Stay of Execution to and including January 28, 1954, same bond.
1954 Jan 19	Min. 671. Entry overruling motion for new trial. Deft. excepts.
1954 Jan 19	Min. 671. Entry overruling motion in arrest of Judgment. Deft. excepts.
1954 Jan 19	Min. 672. Entry consolidating cases for purposes of Appeal.
1954 Jan 19	Notice of Appeal filed. $2.50 fee paid.
1954 Jan 19	Praecipe for transcript of Docket and Journal entries filed.

[fol. 5]

IN COURT OF COMMON PLEAS

DOCKET AND JOURNAL ENTRIES

THE STATE OF OHIO

vs.

EMMETT CALVIN BROWN

PRECIPE FOR WARRANT FILED AND WARRANT ISSUED

Indictment for Contempt.

Reported and filed 26 day of June 1953.

Cincinnati, Ohio 1953 Jun 29

I have the within named EMMETT CALVIN BROWN in my custody and have served him with copy of indictment.

Serving Indictment	$ .50
Mileage	.16
Serving Warrant on Indictment	1.00
Mileage	.16
Total	$1.82

Dan Tehan, Sheriff
/s/ FRANK ALF, Deputy

1953 Jun 29	Min. 983. Plea of not guilty entered—Bond $500.
1953 Jun 29	Min. 982. Cash Bond $500. given—Jean Stern Surety.
1953 Aug 5	Min. 698. Counsel assigned Chester R. Shook, Morse Johnson, Milton H. Schmidt and Louis C. Capelle.
1953 Aug 17	Motion to withdraw Plea of not guilty filed.
1953 Sep 8	Motion to Quash filed.

1953	Sep 8	Min. 796. Entry authorizing Defendant to withdraw Plea of not guilty.
1953	Oct 14	Memorandum of Authorities in support of motion to quash.
1953	Oct 14	Indictment filed.
1953	Nov 30	Min. 817. Entry overruling Motion to Quash—Deft. excepts.
1953	Dec 3	Plea in abatement filed.
1953	Dec 10	Min. 877. Entry overruling Plea in abatement. Deft. excepts.
1953	Dec 10	Demurrer filed.
1953	Dec 10	Min. 878. Entry overruling Demurrer. Deft. excepts.
1953	Dec 15	Min. 899. Plea of not guilty entered—Bond $..... .
1953	Dec 15	Min. 900. Waiver of trial by Jury entered.
1953	Dec 15	Min. 900. Application for O. S. filed and allowed.
1953	Dec 15	John Bean—O. S. 11 Days $8.00.
1953	Dec 15	Min. 901. Cause progressed 1st Day. Testimony adduced in part, and continued to Friday, Dec. 18, 1953, 10:00 A.M.
1953	Dec. 18	Min. 916. Cause progressed 2nd Day. Testimony adduced in full, and continued to Monday, Dec. 21, 1953, 10:00 A.M.
1953	Dec 21	Min. 922. Cause heard and Submitted. Cause continued to Monday Dec. 28, 1953, 10:00 A.M. Deft. released same bond.
1953	Dec 22	Samuel Devine Sw. Gordon Renner Sw.
1953	Dec 22	Edwin Hammock Sw. Sidney Isaacs Sw.

[fol. 6]

1953	Dec	28	Min. 938. Court finding Defendant guilty as charged.
1953	Dec	28	Min. 938. Sentence—County Jail Ten Days —Fine $500.00 and costs.
1953	Dec	28	Min. 939. Entry granting Stay of Execution until January 7, 1954, and setting bond at $1000.00.
1953	Dec	28	Min. 933. Stay of Execution bond given—Jean Stern Surety.
1953	Dec	30	Motion for a new trial filed.
1953	Dec	30	Motion in arrest of Judgment filed.
1954	Jan	4	Costs as to Emmett Calvin Brown—Amt. $56.21.
1954	Jan	7	Min. 619. Entry granting additional Stay of Execution to and including January 28, 1954, same bond.
1954	Jan	19	Min. 671. Entry overruling motion for new trial. Deft. excepts.
1954	Jan	19	Min. 671. Entry overruling motion in arrest of Judgment. Deft. excepts.
1954	Jan	19	Min. 672. Entry consolidating cases for purposes of Appeal.
1954	Jan	19	Notice of Appeal filed. $2.50 fee paid.
1954	Jan	19	Praecipe for transcript of Docket and Journal entries filed.

[fol. 7]

IN THE COURT OF COMMON PLEAS OF HAMILTON COUNTY

INDICTMENT—June 26, 1953

Term of April in the year nineteen hundred and fifty-three

Hamilton County, ss.

First Count

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths present that Talmadge Raley on or about the Twentieth day of October in the year nineteen hundred and fifty-two, at the County of Hamilton and State of Ohio, aforesaid, was lawfully summoned to appear before the lawfully created Un-American Activities Commission of the State of Ohio; was duly and lawfully sworn by the Chairman of said Commission to tell the truth as to certain matters about which he was to be interrogated, or to conform to the provisions of Section 12137 of the General Code of Ohio, and did refuse so to testify in the following, to-wit:

> Q. Now, Mr. Raley, as an official of the United Electrical workers, is there any concern among the officials of the possible presence of Communist Party members among the leadership of the UE?

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

[fol. 8] CLERK'S NOTE. Counts 2 through 16 contain identical language except as to the question about which appellant Raley refused to testify. Such questions are as follows:

Second Count

* * * * * * *

> Q. Now, as a matter of fact, Victor Decavitch was formerly district president of the UE, was he not?

* * * * * * *

[fol. 9] Third Count

Q. Now, as a matter of fact, that was the headquarters of Local 766 of the UE at that time; isn't that correct?

[fol. 10] Fourth Count

Q. According to the Daily Worker for June 8, 1949, five United Electrical Workers issued statements—five United Electrical leaders; pardon me, issued protests against the jailing of Gus Hall, Henry Winston, and John Gates, and it listed those five protestors as Lem Markland, Herbert Hirshberg, Joe Sheetz, John Thomas, and Talmadge Raley. Did you as a UE leader issue a protest against the jailing of these three men?

[fol. 11] Fifth Count

Q. Do you know Herbert Hirshberg?

[fol. 12] Sixth Count

Q. Do you know Joseph Sheetz?

[fol. 13] Seventh Count

Q. Do you know John Thomas?

[fol. 14] Eighth Count

Q. As a matter of fact, every one of these individuals are leaders of the UE, or were leaders of the UE at that time, were they not, Mr. Raley?

[fol. 15] Ninth Count

Q. Let me refer to an article carried in the Cincinnati Post on September 13, 1949, captioned, "Schools Trace Communist Propaganda. Union Agent Denies Kits Are Leftist," and refers to an interview with you. Do you recall that interview?

[fol. 16] Tenth Count

Q. I wonder if you are familiar with, or happen to know, Jerome Joseph?

[fol. 17] Eleventh Count

Q. Victor Pasche; do you know him?

[fol. 18] Twelfth Count

Q. Do you happen to know Herbert Siens?

[fol. 19] Thirteenth Count

Q. Do you happen to know Marie Reed Haug?

[fol. 20] Fourteenth Count

Q. Do you happen to know Paul Shepherd?

[fol. 21] Fifteenth Count

* * * * * * *

Q. Isn't it a fact that the people I have just listed are all prominent in the leadership of the UE in Cleveland, Ohio?

* * * * * * *

[fol. 22] Sixteenth Count

* * * * * * *

Q. Who has a similar—holds your position in the Cleveland area at the present time, with the union?

* * * * * * *

/s/ C. Watson Hover, Prosecuting Attorney, Hamilton County, Ohio.

[fol. 22A]

No. 65746

HAMILTON COUNTY COMMON PLEAS

THE STATE OF OHIO

Vs.

TALMADGE RALEY

Indictment for Contempt
76-32 G. C.

A True Bill

/s/ Mrs. Hilda M. Oyler, Foreman of the Grand Jury.

Reported and filed this 26 day of June A. D. 1953

Elmer F. Hunsicker, Clerk of Hamilton County Common Pleas.

By /s/ Louis F. Scholle, Deputy.

C. Watson Hover, Prosecuting Attorney, Hamilton County, Ohio.

Cin'ti. O., 1953 Jul 6

Plea of not Guilty Entered
Elmer F. Hunsicker, Clerk
Louis F. Scholle

December—21st, 1953

Cause heard and submitted, Defendant released on same bond.

Kearns,

December—28th, 1953

Court finding Defendant Guilty as charged.

Sentence—County Jail, Ten (10) Days, Fine—$500.00, and Costs.
(See Entry)

Kearns, J.

[fol. 23]

IN THE COURT OF COMMON PLEAS OF HAMILTON COUNTY

INDICTMENT—June 26, 1953

Term of April in the year nineteen hundred and fifty-three

Hamilton County, ss.

First Count

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths present that Joseph Stern on or about the Twentieth day of October in the year nineteen hundred and fifty-two, at the County of Hamilton and State of Ohio, aforesaid, was lawfully summoned to appear before the lawfully created Un-American Activities Commission of the State of Ohio; was duly and lawfully sworn by the Chairman of said Commission to tell the truth as to certain matters about which he was to be interrogated, or to conform to the provisions of Section 12137 of the General Code of Ohio, and did refuse so to testify in the following, to-wit:

Q. Where do you reside, Mr. Stern?

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

[fol. 24] Second Count contains identical language except as to the question about which Appellant Stern refused to testify. The question is as follows:

* * * * * * *

Q. I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this county?

* * * * * * *

/s/ C. Watson Hover, Prosecuting Attorney, Hamilton County, Ohio.

[fol. 25]

No. 65747

HAMILTON COUNTY COMMON PLEAS

THE STATE OF OHIO

Vs.

JOSEPH STERN

Indictment for Contempt
76-32 G. C.

A True Bill

/s/ Mrs. Hilda M. Oyler, Foreman of the Grand Jury.

Reported and filed this 26 day of June A. D. 1953

Elmer F. Hunsicker, Clerk of Hamilton County Common Pleas.

By /s/ Louis F. Scholle, Deputy.

C. Watson Hover, Prosecuting Attorney, Hamilton County, Ohio.

Cin'ti. O., 1953 Jul 6

Plea of not Guilty Entered
Elmer F. Hunsicker, Clerk
Louis F. Scholle

December—21st, 1953

Cause heard and submitted, Defendant released on same bond.

Kearns, J.

December—28th, 1953

Court finding Defendant Guilty as charged.

Sentence—County Jail, Ten (10) Days, Fine—$500.00, and Costs. (See Entry)

Kearns, J.

[fol. 26]

IN THE COURT OF COMMON PLEAS OF HAMILTON COUNTY

INDICTMENT—June 26, 1953

Term of April in the year nineteen hundred and fifty-three

Hamilton County, ss.

First Count

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths present that Emmett Calvin Brown on or about the Twentieth day of October in the year nineteen hundred and fifty-two, at the County of Hamilton and State of Ohio, aforesaid, was lawfully summoned to appear before the lawfully created Un-American Activities Commission of the State of Ohio; was duly and lawfully sworn by the Chairman of said Commission to tell the truth as to certain matters about which he was to be interrogated, or to conform to the provisions of Section 12137 of the General Code of Ohio, and did refuse so to testify in the following, to-wit:

Q. And what has been your educational background?

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

[fol. 27] CLERK'S NOTE. Counts 2 through 4 contain identical language except as to the question about which Appellant Brown refused to testify. Such questions are as follows:

Second Count

* * * * * * *

Q. Mr. Brown, were you ever employed by the Fisher Body plant at Norwood, Ohio?

* * * * * * *

[fol. 28] Third Count

* * * * * * *

Q. Is there anything about being employed at that plant which might tend to incriminate you?

* * * * * * *

[fol. 29] Fourth Count

* * * * * * *

Q. Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the ballot in that election?

* * * * * * *

/s/ C. Watson Hover, Prosecuting Attorney, Hamilton County, Ohio.

[fol. 30]

No. 65749

HAMILTON COUNTY COMMON PLEAS

THE STATE OF OHIO

Vs.

EMMETT CALVIN BROWN

Indictment for Contempt
76-32 G. C.

A True Bill

/s/ Mrs. Hilda M. Oyler, Foreman of the Grand Jury.

Reported and filed this 26 day of June A. D. 1953

Elmer F. Hunsicker, Clerk of Hamilton County Common Pleas.

By /s/ Louis F. Scholle, Deputy.

C. Watson Hover, Prosecuting Attorney, Hamilton County, Ohio.

Cin'ti. O., 1953 Jun 29

Plea of not Guilty Entered
Elmer F. Hunsicker, Clerk
Louis F. Scholle

December—21st, 1953

Cause heard and submitted, Defendant released on same bond.

Kearns, J.

December—28th, 1953

Court finding Defendant Guilty as charged.

Sentence—County Jail, Ten (10) Days, Fine—$500.00, and Costs. (See Entry)

Kearns, J.

[fol. 31]

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CRIMINAL DIVISION

No. 65746

STATE OF OHIO, Plaintiff,

—vs—

TALMADGE RALEY, Defendant.

ENTRY APPOINTING COUNSEL—August 5, 1953

Defendant herein having represented to the Court that he is unable to procure or obtain counsel to defend him

herein and it appearing further that he stated that he did not desire to proceed in his own defense without being represented by counsel and said defendant having requested that the Court assign counsel

It Is Hereby Ordered, Adjudged and Decreed That Chester R. Shook, Morse Johnson, Milton H. Schmidt and Louis C. Capelle be appointed as counsel for said defendant and they are hereby directed, as Attorneys of this Bar and Officers of this Court, to proceed with the defense of the defendant herein without unnecessary delay.

(Clerk's Note. Similar orders were entered in the case of Ohio v. Stern and Ohio v. Brown).

[fol. 34]

In the Court of Common Pleas
Hamilton County, Ohio

Criminal Division

No. 65746

State of Ohio, Plaintiff,

—vs—

Talmadge Raley, Defendant.

Motion to Quash—Filed September 8, 1953

The defendant moves to quash the indictment filed herein for the following reasons:

1. The indictment does not state that the defendant refused to answer any question which he was asked or directed to answer by the Un-American Activities Commission of Ohio.

2. The indictment does not state that the questions in respect of which the defendant "did refuse so to testify" were relevant or material to any investigation that said Commission was authorized by law to conduct, or were

questions concerning any matters upon which defendant could be lawfully interrogated.

3. The said Un-American Activities Commission was without legal authority to hold a hearing or investigation and to question the defendant since said Commission was created by Act of the 99th General Assembly of Ohio which had adjourned sine die prior to the holding of the hearing on October 20, 1952, and the said Act creating the Un-American Activities Commission is unconstitutional and void in directing the Commission to report its investigations to the General Assembly of Ohio to be convened after the adjournment of the 99th General Assembly establishing and appointing the Commission.

4. The provisions of the Act creating the said Un-American Activities Commission providing for punishment of witnesses called before said Commission for failing or re-
[fol. 35] fusing to answer questions at a hearing of said Commission are unconstitutional and void in that

(a) the act itself specifies no penalty for such refusal of a witness;

(b) the Act attempts to incorporate by reference certain penal provisions of general statutes (G. C. 12137, et seq.) relating specifically and exclusively to contempt of court;

(c) the indictment charges the defendant with committing a contempt of court for alleged misconduct at a hearing of a legislative commission which can not be authorized by law to perform judicial functions;

(d) the provisions of the Act authorizing punishment for contempt is an unconstitutional usurpation of the judicial power in violation of Article II, Section 32, of the Ohio Constitution.

5. The defendant properly asserted his privilege not to testify with respect to the questions set forth in the indictment as guaranteed to him by the Fifth and the Fourteenth Amendments to the Constitution of the United States and by Article I, Section 10, of the Constitution of Ohio, and the indictment fails to state either that the defendant's asserted claim of constitutional privilege not to testify

was improper or that such claim was overruled by the Chairman of the Commission and the defendant was directed to answer the questions set forth in the indictment.

6. The questions asked the defendant by the said Commission as set forth in the indictment constituted an unconstitutional invasion of defendant's rights of freedom of speech as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States and by Article I, Section 11, of the Constitution of Ohio.

/s/ Milton H. Schmidt, /s/ Louis C. Capelle, /s/ Morse Johnson, /s/ Chester R. Shook, Attorneys for Defendant.

Clerk's Note. Identical motions were made for Defendants Stern and Brown.

[fol. 40] In Common Pleas Court,
Hamilton County, Ohio

Nos. 65746, 65747, 65749, 65750

State of Ohio, Plaintiff,

—v.—

Talmage Raley, Joseph Stern, Emmet Calvin Brown, Reuel Stanfield, Defendants.

Bill of Exceptions

Messrs. Hover and Rubin appearing on behalf of the State of Ohio.

Messrs. Schmidt and Capelle appearing on behalf of defendants.

Be It Remembered, That, upon the trial of the foregoing cause at the October, 1953, Term of the Court Of Common Pleas, Hamilton County, Ohio, before the Hon. George E.

Kearns to try the issues joined the following proceedings were had:

The plaintiff, to maintain the issues on its part, introduced the following in evidence:

[fol. 41] Mr. Hover: I am reading from the House Journal, Volume 124, Regular and Special Session, 1951, Page 1642, Tuesday, June 19, 1951:

"Pursuant to the provision of the Senate Bill, No. 358,—Messrs. Blackburn-Powell,—the Speaker appointed the members of the House; Messrs. Robinson, of Marion, Scheider, Devine, Reider and Corrigan."

Mr. Hover: Also, your Honor, Volume 124, of the Ohio Senate Journal, Regular and Special Senate Session, 1951, from Page 1971, being the Senate Journal for Tuesday June 19, 1951:

"Message from the House of Representatives: Mr. President, I am directed to inform you that the Speaker of the House of Representatives, in the presence of the House, has signed the following Bill and Joint Resolution, SJR, Senate Joint Resolution, No. 21. Mr. Ferguson Attest, Carl Guess, Clerk.

"The President, in the presence of the Senate, signed said Bill and Joint Resolution. Under the provisions of SB No. 358,—Blackburn-Powell,—the President has appointed as such Committee Messrs. Powell, Blackburn, Bartuneck and Carney."

[fol. 42] Morning Session, December 15, 1953.

Mr. Hover: On the present state of the record, the state is ready to proceed on the first of these cases, Case No. 65746, State v. Raley, if there is any possibility of proceeding with the cases jointly, I think it will have to be a matter of stipulation of counsel and agreement by the Court.

The Court: What is the situation of the defense counsel?

Mr. Schmidt: On behalf of the defendants, I will state for the record, they are agreeable to have all the cases taken together. With the consent of the defendants we agree to try them all together.

The Court: With that understanding and that stipulation you may proceed to make the opening statements in all four cases.

(Thereupon, opening statements were made by counsel for the State of Ohio and counsel for defendants, after which counsel for the State of Ohio read into the record the following:

[fol. 43] SAMUEL L. DEVINE, being first duly sworn, testified in behalf of the State of Ohio as follows:

Direct examination.

By Mr. Hover:

Q. Will you state your name and address?

A. Samuel L. Devine, Columbus, Ohio.

Q. In 1951 you occupied what position in the Ohio state legislature?

A. I was a member of the Ohio state legislature.

Q. Mr. Devine, after being appointed to the Un-American Activities Commission pursuant to the House and Senate action, did you thereafter attend the meetings of that commission?

A. I did.

Q. Did you attend a meeting of the commission on or about September 19, 1951?

A. I believe that was the organizational meeting of the commission.

Q. I will ask you to examine State's identification No. 1 and state what that is? (A paper is marked Identification 1.)

A. This appears to be the original minutes of the Ohio Un-American Activities Commission organizational meeting of September 19, 1951.

Q. What action, if any, was taken at that meeting relative to the selection of a chairman and secretary of the [fol. 44] commission?

A. These minutes reveal that Gordon Renner, of Cincinnati, was elected by the commission as chairman and I was elected secretary.

Q. Did Mr. Renner, or did you continue thereafter to act as secretary of the Un-American Activities Commission?

A. Yes; Mr. Renner continued as Chairman and I continued as secretary until, I believe, January 1, 1953.

Q. Were you chairman or secretary on October 2, 1952?

A. Yes, sir.

OFFERS IN EVIDENCE

Mr. Hover: At this time the State would like to offer in evidence Identification 1.

(Papers heretofore marked Identification 1, entitled Minutes of the organization meeting of the Un-American Activities Commission, Wednesday, September 19, 1951, is introduced in evidence and marked Exhibit 1.)

(Four papers, entitled Resolutions, are marked Identifications 2, 3, 4, and 5.)

Q. I show you documents marked Identifications 2, 3, 4 and 5, and ask you if you can state to the court what those documents are?

A. Yes, sir.

Q. What are they?

A. These four instruments are resolutions adopted by the Commission members who were present at the Cincinnati hearing September 17, 1952, authorizing the Chairman to institute contempt proceedings, giving him that authority.

Q. I call your attention to the signature on the lower left [fol. 45] hand corner of each of the identifications and ask you whether or not that is your signature as secretary?

A. The lower right hand corner is my signature as secretary on each of these exhibits.

Mr. Hover: At this time I would like to offer Identifications 2, 3, 4 and 5 in evidence.

(Papers heretofore marked Identifications 2, 3, 4 and 5 are introduced in evidence and are marked Exhibits 2, 3, 4 and 5.)

Q. As secretary of the commission, did you have charge of the commission records and minutes of its proceedings?

A. I did.

Q. Do you have with you the minutes of the meeting of October 20, 1952, at Cincinnati, Ohio?

A. I have that transcript.

Q. Will you refer to those records and state the members of the commission who were present at the Cincinnati hearing on October 20, 1952, of the commission held in the Hamilton County court house?

Mr. Schmidt: May I interject an objection to that? I think that the best evidence of the proceedings is contained in the transcript of the proceedings rather than the witness reading from the transcript which is not in evidence. I have no objection to the entire transcript going in evidence. I object to his statement of what it shows.

The Court: The only question is, who was present. He [fol. 46] knows who was without the need of refreshing his memory.

Mr. Schmidt: If he can so state, it is a different matter.

A. I can testify who was present.

Q. Will you tell from the minutes of the commission who was present at the hearing in Cincinnati October 20, 1952?

A. Chairman Gordon Renner, from Cincinnati, Representative Louis Schneider, from Cincinnati, Representative Kenneth Robinson, Representative John Corrigan, Cleveland, Senator Headley, Cincinnati, Senator Leo Blackburn, Portsmouth, and myself.

Q. Where was this October 20, 1952, hearing held?

A. In Hamilton County, Cincinnati, Ohio, court house.

Q. That is all I have of this witnesss.

Cross examination.

By Mr. Schmidt:

Q. For what purpose were the defendants at this hearing permitted to have counsel?

A. For what purpose?

Q. If you know?

A. All witnesses before the commission are entitled to have counsel if they wish.

Q. Were they allowed to cross-examine the witnesses?

A. No. The purpose was to consult with counsel if they had any legal questions.

[fol. 47] Q. Any legal questions as to his rights in self-incrimination?

A. As between witness and counsel the witness was permitted to ask counsel what his legal rights were. Counsel was not permitted to tell the witness what answer he was to give.

Q. What do you mean by legal answer?

A. Whether or not the man should answer the question I would imagine. Any person who employs counsel consults him about what his legal rights are, what he may or may not do.

Q. In regard to what?

Counsel for the State objected, and the objection was sustained, to which counsel for defendants excepted.

Q. Were the defendants advised of any immunity against answering questions?

A. I don't recall, sir. I know that the chairman of the commission made certain statements from time to time, but I can not recall any particular immunity he granted to any witness.

Q. I call your attention to General Code Section—

Mr. Hover: I object to any General Code Section being used to cross-examine the witness.

The Court: Let him finish the question.

Q. Are you familiar with General Code Section 60?

Counsel for the state objected and the objection was sustained.

[fol. 48] Counsel for defendants excepted to the ruling of the court.

Q. I have no further questions.

Mr. Capelle: I think Mr. Hover handed you a transcript of the proceedings of October 20, 1952, here in Hamilton county?

Mr. Schmidt: Here it is.

(Transcript of proceedings last referred to is marked Identification No. 6.)

By Mr. Capelle:

Q. I will ask you to identify that report?

A. This is a copy of the report of the Ohio Un-American Activities Commission of 1951-1952.

(Report last referred to is marked Identification 7.)

(Witness leaves the stand.)

[fol. 49] Gordon Renner, being first duly sworn, testified in behalf of the State of Ohio as follows:

Direct examination.

By Mr. Hover:

Q. Your full name and address?

A. 211 East Fourth Street, Cincinnati, Ohio.

Q. You are the Renner who was referred to in the excerpt that was read at the inception of this proceeding?

A. I am.

Q. In 1951 what position did you occupy in regard to the General Assembly of Ohio?

A. I was speaker of the House of Representatives.

Q. I will ask you if you will look at Exhibit 1 and state whether or not you are the Renner referred to in that exhibit?

A. Yes; I am.

Q. I will ask you whether or not you occupied the position of Chairman of the Un-American Activities Commission at the time of a hearing held in Cincinnati October 20, 1952?

A. I did occupy that position.

Q. You presided at that hearing?

A. I did.

Q. Pursuant to your duties as commission chairman?

A. I did.

Q. Was a stenographic record of those proceedings made?

[fol. 50] A. It was made. Such a record was made.

Q. By whom?

A. It was made by the firm of Hammock & Pace, court reporters, Columbus, Ohio.

Q. Do you know the individual who made the record?

A. Mr. Hammock of that firm.

Q. At that hearing did the commission have present its legal director and counsel?

A. Yes.

Q. Who was that?

A. Mr. Sidney Isaacs, and he was present.

Q. What function did he perform at the hearing to which I referred?

A. It was customary in all hearings of the commission that the legal director proceed to ask questions of the witnesses, which he did at that hearing. That was the procedure adopted by the commission.

Q. Prior to the October 20th hearing what steps, if any, did you take as chairman to effect the presence of certain witnesses before the commission?

A. Well, under the statute the chairman of the commission is authorized and directed to proceed to issue any subpoenas for witnesses pursuant to that directive. I issued the subpoenas for each of the four witnesses here and delivered them to our counsel, who caused them to be served.

Q. Were Talmage Raley, Emmett Calvin Brown, Reuel [fol. 51] Stanfield and Joseph Stern present as witnesses before your commission?

A. Yes; they were.

Q. Can you state whether or not they were sworn as witnesses?

A. They were sworn, each of them by myself.

Q. I will show you Exhibits two to five, entitled Resolutions, and ask you whether or not the signature appearing in the lower lefthand corner is yours?

A. Yes; on each of these exhibits the signature in the lower lefthand corner as well as the signature on the right side underneath the resolution is my signature, the top one in each case.

(Papers, four in number, entitled Request for institution of proceedings, for Contempt, are marked Identifications, 8, 9, 10 and 11.)

Q. I will show you four pieces of paper, marked Identifications 8, 9, 10 and 11, eight referring to Emmett Calvin Brown, nine referring to Reuel Stanfield, ten referring to Joseph Stern, and eleven referring to Talmage Raley, and ask you if you can state to the court what those exhibits or documents are?

The Court: Has counsel seen these?

Mr. Schmidt: Not yet.

A. Each of these exhibits is a request by me as Chairman of the Commission, directed to the prosecuting attorney of [fol. 52] Hamilton County to institute proceedings in contempt against each of the four defendants here today.

Q. And the signature appearing, the only written signature on the page is your signature?

A. That is my signature on each page.

OFFERS IN EVIDENCE

Mr. Hover: At this time the State would like to offer in evidence State's Exhibits six to nine, covering the documents which have been identified by the witness.

(Papers heretofore marked Identification, 8, 9, 10 and 11 are introduced in evidence, marked Exhibits 10, 11, 12 and 13.)

Cross examination.

By Mr. Schmidt:

Q. You said in 1951 you were speaker of the House of Representatives of Ohio?

A. That is correct.

Q. Are you still a member of the legislature?

A. I am.

Q. What position do you now occupy?

A. I am a member of the legislature.

Q. Of which house?

A. House of Representatives.

Q. You were present, I take it, when the 99th General Assembly enacted the act which is now known as the Ohio Un-American Activities Commission Act?

A. That is correct.

[fol. 53] Q. For the record, I will ask you to state, if you can, tell me the date that became a law of the State of Ohio, that act?

A. It was ninety days after the signing of the bill by the governor. The Journal, of course, would show. The Journal I believe is here.

Q. Well, there is, I think, some doubt about it. The Journal shows it became effective June 18, 1951. Do you accept that?

A. I will accept the date the Journal shows.

Q. Let's get it correct from the Journal? Here is a printed copy of that act.

A. That shows it was approved by the governor June 18, 1951; yes.

Q. Now, the following day after the enactment of this act, the 99th General Assembly of the Ohio Legislature adjourned, did it not?

A. What is that question, sir?

Q. I say, on the 19th of June, 1951, the day after this law became effective as the law of Ohio, the General Assembly adjourned sine die—do you recall that?

A. Yes; I believe that is true, although I know of no relationship between the two.

Q. I am not asking you about any relationship.

A. Yes; the bill was signed by the governor on the 18th [fol. 54] day of June. The last day of the session was the 19th of June.

Q. After the 19th of June, the 99th General Assembly the 99th General did not re-assemble for any other purpose, did it? There was a special session the following December relating to turnpike matters. That session was limited to the purpose set forth in the call?

A. That is right.

Q. There was nothing in that call of that special session which related to any legislation concerning that so-called subversive activities?

A. None whatever.

Q. You understood, I take it, from the law that as chairman of the Ohio Un-American Activities Act your functions were to make certain investigations for the purpose laying before them possible legislation to be enacted by the Ohio General Assembly?

A. Yes; that function is the principal purpose of any legislative investigation.

Q. You, as you stated, were appointed chairman of the commission?

A. Yes.

Q. And you acted as chairman for how long?

A. Until the beginning of this year. The date I would not know. At the meeting of 1953, I was chairman of the commission from the date of the organization in September, fifty-one until the beginning of October, 1953.

[fol. 55] Q. And this commission held hearings in various parts of the state, is that right?

A. Yes.

Q. And subpoenaed a number of witnesses from the state?

A. Yes.

Q. And witnesses from outside the state?

A. Not by subpoena. We don't have the power to subpoena outside the state of Ohio.

Q. You obtained the testimony of witnesses from other parts of the country, did you not?

A. That is probably true. When I say probably, I am not sure of the absolute residence of some of the witnesses who testified before the commission, although at the time

we reached them, we probably reached them outside the state. That is a matter our counsel could answer with correct certainty.

Q. You remember the testimony of a man named Civinatt. He was in the Pennsylvania area, wasn't he?

A. His efforts had been to a considerable extent in the Pittsburgh area.

Q. And he was, by his statement, a former FBI, Federal Bureau of Investigation undercover?

A. Yes.

Q. And he had been an agent for the FBI.— Withdraw that. And while he had been an agent, he obtained membership of a certain communist party, he stated, didn't he?

[fol. 56] Question objected to by counsel for the State of Ohio, and the objection was overruled.

A. Mr. Schmidt, you must appreciate there have been about sixty witnesses appear before the commission in open hearing. Their testimony sometimes runs into hundreds of pages. The record of Mr. Cvetic's testimony was open testimony, and the record would show. I would hesitate to say that he said so and so, or didn't say.

Q. In other words, your recollection is not adequate on that subject?

A. Frankly, I have read much in Mr. Cvetic's testimony in Washington, and I am a little confused trying to separate his testimony from what I read in those hearings and what I heard him say in front of my own commission.

Q. You prepared a rather detailed and extensive report of the proceedings before the commission and submitted it to the Governor of Ohio January 1, 1953?

A. You appreciate, of course—

Q. Well, yes or no, did you prepare the report?

A. I personally did not prepare the report; no.

Q. There has been offered in evidence for identification Exhibit 7 a volume entitled Report of the Un-American Activities Commission, State of Ohio, 1951-1952. It says on the first page Report of the Un-American Activities Commission, State of Ohio, 1951-1952, and copy of what

[fol. 57] appears to be a letter in typewritten form, with your name typewritten as chairman, after the statement Respectively submitted. I presume you signed the original of that letter, didn't you?

A. Yes; I dare say.

Q. And transmitted the original to the governor?

A. Yes. You asked me if I prepared the report.

Q. How much did you, yourself, personally, do with the preparation of this Exhibit 7?

Question objected to by counsel for the State, and the objection was sustained.

Q. Without asking you if you personally recall the extent to which you, yourself, prepared this official report which you submitted, I will ask you if you don't recall there was contained in the report a resume of the testimony of this man Cvetic referred to?

A. I do recall there was a resume.

Mr. Hover: The record is the only acceptable evidence, not this man's recollection of the record.

The Court: It is answered, and the court permitted it.

Q. Is it correct to state in connection with the performance of your function on this commission, and the members of your commission and its employees cooperated and collaborated with the FBI in this matter of subversive activities?

A. No; that is not a correct statement. In answering that question, I might bear in mind, you said I, as chairman and the members of the commission and the employees, and [fol. 58] the answer is no.

Q. Will you put us straight on that? What is the correct situation?

Counsel for the State of Ohio objected, and the objection was sustained.

A. I have no knowledge about that.

The Court: I have ruled. Will you wait when the objection is made?

Q. Did you furnish any information in these committee hearings to any federal authorities?

Counsel for the State objected, and the objection was sustained.

Q. Did you furnish any information to any local police authorities of any kind?

Counsel for the State objected, and the objection was sustained.

Q. In one of the matters which you discussed, did you not, in connection with these hearings, say that you felt there should be a central clearing house or agency established in which to assemble information concerning subservice activities for the State of Ohio?

Counsel for the State objected, and the objection was overruled.

A. I rather agreed with the members of the commission that such a clearing agency would be desirable. To that, I confess. So far as the time is concerned, I don't remember as to when discussed that, but it is entirely possible that [fol. 59] it was after this hearing when we started recommendations recommendation which we would make to the General Assembly, the recommendations included in the report.

Mr. Hover: I ask that the answer be stricken.

The Court: The answer may remain in the record. The motion to strike is overruled.

Q. At the time you held these hearings concerning these defendants here, did your commission have in its files reports concerning their personal activities?

A. We had certain records. Of what you refer to as personal activities, we would not precisely be able to define.

Q. I think you know what I mean; personal activities in connection with any of the matter which, under the law, your committee or commission should investigate, that is to say, essential subservice activities in the State of Ohio?

A. Those reports are records that cover the whole of the commission, there were commission reports. Whether there were reports on each of these four witnesses, I would not be in position to state, although there quite possibly were.

Q. Don't you recall you had rather a long detailed report of a man by the name of Cecil Scott?

Mr. Hover: I object unless the time is stated.

Q. I said prior to the hearing.

A. I didn't hear the prior. We had some of Mr. Scott.

[fol. 60] Q. In what form?

A. There was a transcript.

Q. That is sworn testimony?

A. Yes.

Q. At the hearing of the commission?

A. Yes.

Q. That testimony had identified these four men, hadn't it?

Mr. Hover: I object. The testimony is the best evidence, not this witnesses' testimony.

The Court: I recognize that, but I can't, under the law, I can't ask the questions, but I must pass upon it in the form in which they are asked.

A. It is my recollection that the names of three of these defendants appear in the sworn testimony of Mr. Scott.

Q. Which three, if you recall?

A. I have a recollection of the name of Talmage Raley being mentioned, and Emmett Brown. I don't recall that the name of Joseph Stern appeared or the name of Mr. Stanfield appeared.

Q. That is just absence of recollection. You would not be able to say they did not appear?

The Court: You have asked him, and he has given his recollection. If a man has given his recollection, we are not going to impeach him on his recollection.

Mr. Schmidt: I don't want to impeach him.

Q. You recall that that testimony that you have referred [fol. 61] to named at least these two men whose names you recall had formerly been members of the communist party?

Mr. Hover: I object.

The Court: That is not what he said. He said these two names were mentioned in this record of the testimony

of those individuals. That is what he has testified to. The objection is sustained.

Q. I will ask you this question, do you recall as to those two names that were mentioned in Mr. Scott's testimony, the substance of Mr. Scott's testimony concerning those two gentlemen?

Question objected to by counsel for the State.

The Court: The inquiry is only with respect to whether or not he has any recollection with respect to the Character of that testimony. He can say whether he does or does not. From there we are just wasting time. Have you any recollection with respect to the character of testimony that was made with respect to these two individuals?

A. Yes. Of course, the purpose of our investigation was to investigate Un-American Activities and that was the subject matter of the testimony of Cecil Scott.

Q. With respect to what men?

A. What do you mean by with respect to?

Q. The subject matter of Scott's testimony before your [fol. 62] commission specifically with respect to these two men whom you say you recall as having been mentioned.

A. I would hesitate to attempt to quote any of the testimony without having seen it more recently than I have. It has been quite awhile since I have seen the testimony.

Q. You could not quote, but the substance of it, do you feel that you can give us that?

A. I think the testimony of Cecil Scott was released, and I would much prefer to go to that testimony than try to state what it contains from recollection.

Q. Do you have here with you?

A. No; I don't.

Q. Do you have in your file any reports and statements or testimony from any other persons linking any of these men with any subversive activity in the State of Ohio prior to the hearing?

Counsel for the State objected on the ground it calls for the conclusion of the witness in defining what is or is not subversive activity, and the objection was sustained.

Q. I will change the phrase subversive activity in that question to any activity set forth specifically in the statute relating to Un-American activity. With that amendment I repeat the question.

A. It would be foolish for me to attempt to make a statement of that. I believe there are some twenty to thirty [fol. 63] witnesses before the commission, persons who refused to answer questions before the commission and against whom due proceedings are in action. And for me to retain in my mind the status of all those cases would be most difficult, in view of the fact I have not been a member of the commission since last August, when the records have not been available to me.

Q. What was your purpose in subpoenaing these four men on the 20th of October to interrogate them?

A. The purpose, I would say, would be to learn what, if anything, they knew about the communist activities in the Cincinnati area.

Q. Isn't it a fact that you already had that information of record in the commission?

Counsel for the state objected, and the objection was sustained.

Q. Did you know at the time you subpoenaed them, three of these men were members of the United Electrical Workers Union?

A. I dare say that knowledge was available to us.

Q. I am asking you?

A. Probably at that time I had.

Q. You had prior to October 20, fifty-two, expressed yourself publicly, had you not, to the effect that the United Electrical Workers Union was a communist dominated union?

A. Yes; I have.

[fol. 64] Counsel for the State objected, the objection was sustained, to which counsel for defendants excepted.

Q. Did you have any information or data in the file of the commission prior to this hearing concerning the activities of the United Electrical Workers Union?

A. From my own viewpoint it was fathered largely from

what was largely familiar to the public, printing in magazine stories and newspapers and things of that sort. As far as my own information was concerned, I did not go too closely into that. It was largely a matter for counsel.

Q. Is the answer then, you don't have any information to answer the preceding question?

A. I have a general knowledge or belief that in our file there would have been some information about it, but what the sources were, whether the source included magazine articles and things of that sort, I would not be able to say. I was simply a member of the legislature and I was the chairman of this commission, and I didn't have the time or the opportunity to do the lackey work or even to examine fully and completely the records that were gathered.

Q. Just one more question about this Mr. Cecil Scott I asked you about before, was he personally present at the hearing in Cincinnati on this date you are talking about?

A. On October 20th?

Q. Yes.

A. My recollection is he was in the room.

[fol. 65] Q. Was he in the room the entire time you were questioning?

A. No; I would like to withdraw that. I believe he was not in the room on October 20th.

Q. Was he there at any time when any of these men were questioned?

A. Not to my recollection.

Q. Now, as these witnesses appeared and refused to answer certain questions, were you requested at any time to rule on whether or not they had asserted the privilege against incrimination or had not?

A. Frequently that question did arise, and it may have arisen in the case of these witnesses. The record would show, I presume.

The Court: Have you seen this Identification 6?

A. I have not seen this since the first of the year.

Q. Have you had a chance to read it?

A. I have not actually read it. It was in my possession at the time I turned it over to the county prosecutor together with our letter or directive to him to proceed.

Q. Are you in position to say that transcript fairly and accurately records the happening of events before your commission?

A. Yes; I believe it does.

Mr. Schmidt: That don't show in here whether anything that took place during the commission hearing prior to the taking down of the first part of his, is not included to your knowledge?

[fol. 66] Counsel for the State objected, and the objection was sustained.

Q. Can I ask you this, you recall, don't you, that at no time in this hearing did you ever advise any of these men that they had immunity under the laws of Ohio from prosecution with regard to any questions they might give?

A. I would not like to say with certainty, Mr. Schmidt, because I know of some cases witnesses were so advised. I particularly have in mind hearing a member of the commission, Mr. Robinson, frequently put questions to witnesses containing that information. Whether he did on this particular day, I don't know. The record would show.

Q. The record would show?

A. Yes.

The Court: The statements of all the commission were taken as well as the questions and answers made by the witness?

A. The practice was for counsel for the commission to ask questions and after he had completed his inquiry, the questioning was turned over to the members of the commission individually, and usually some or all of the members of the commission had questions that they desired to ask of the witness.

By Mr. Schmidt:

Q. You recognize, do you not, that the defendants had the right to assert the privilege of the Fifth Amendment in connection with questions which might tend to incriminate them? Do you recall that?

[fol. 67] A. It was the policy of the commission not press questions which we felt would be of an incriminating nature. For instance, whenever a witness was asked a question—I believe every witness before the commission was asked the question—Are you or have you ever been a member of the communist party, and if the witness refused to answer that question, we did not press it. Frequently I made statements which indicated the policy of the commission. Whether it was to half of the witnesses before the commission or not, I don't know. Probably less than half. But the statement was, "We will not require you to answer questions which may incriminate yourself, but we want it clearly understood that you may not refuse to answer questions on the ground it would incriminate some one else." And I think through the record generally, although not probably always when I made the statement with respect to one it included the other.

Whether that statement was made at the Cincinnati hearing the record will show.

Q. Would it follow, the fact that you did not press for the answer of the particular questions, that, in your judgment, at least as chairman, the answer thereto might tend to incriminate him?

A. No; that is not true at all. However, it was not our practice at any time to press for an answer. Occasionally it was done, but rarely, and not for any particular reason. [fol. 68] Q. I am sorry, but I just understood you to say previously that it was the policy of the commission not to press for answers to questions you felt were incriminating, is that correct?

A. Yes; that was the policy.

(Witness leaves the stand, and court was adjourned until 1:30 o'clock, P. M.)

[fol. 69] AFTERNOON SESSION, December 16, 1953.

EDWARD HAMMOCK, being first duly sworn, testified in behalf of the State of Ohio as follows:

Direct examination.

By Mr. Hover:

Q. Will you state your name?
A. Edward Hammock.
Q. What is your occupation?
A. I am a general reporter.
Q. I will ask you whether or not you were engaged in that occupation October 20, 1952?
A. Yes, sir.
Q. What was the occasion for your reporting on that date?
A. On that date I reported the proceedings before the Ohio Un-American Activities Commission in Cincinnati.
Q. What method did you use to report the hearings of proceedings here?
A. The stenotype machine.
Q. I will ask you whether you have your notes of that hearing?
A. I do.
Q. I will ask you whether or not at that hearing you took down the testimony of a person by the name of Talmage Raley?
A. I did.
[fol. 70] Q. Can you identify that individual in the court room as the one whose testimony you took?
A. Yes.
Q. Will you point him out?
A. The gentleman sitting next to counsel, on counsel's right.
Q. I will ask you whether or not you took the testimony of Reuel Raley on that hearing?
A. Yes.
Q. Do you see him in court?
A. Yes; I do.

Q. Can you identify him?

A. Mr. Stanfield is sitting at the corner of the table with glasses.

Q. I will ask you whether or not you on the occasion stated you took the testimony of Joseph Stern?

A. Yes; I did.

Q. Can you identify him in the court room?

A. Yes.

Q. Who is he?

A. He is the gentleman on this end of the group at the other table.

Q. I will ask you whether or not on that same occasion you took the testimony of Calvin Brown?

A. Yes.

Q. Can you identify him?

A. I can.

Q. Can you point him out?

A. He is the gentleman between Mr. Stanfield and Mr. Stern.

[fol. 71] Q. This hearing was had at what place?

A. In the Hamilton County court house, Cincinnati.

Q. Will you be good enough to refer to your stenotype notes? Is that correctly expressed?

A. That is correct.

Q. The stenotype notes of the hearing to which we have referred, reporting the testimony of Talmage Raley? Will you find that again, please?

A. Yes, sir.

Q. Will you examine those notes to determine whether during the course of the testimony you recorded, Mr. Raley, the witness was asked this question:

"Now, Mr. Raley, as an official of the United Electrical Workers, is there any concern among the officials of the possible presence of Communist Party members among the leadership of the UE?"

Can you find any such question in your notes?

A. Yes; that question was asked.

Q. Will you tell the court what answer was received to that question?

A. "I must assert the privilege of the Fifth Amendment of the Constitution and Article I, Section 10, of the Ohio constitution, and refuse to answer."

Q. Do you have a further answer given to that question?

A. No, sir.

Q. Will you refer again to your notes in the testimony [fol. 72] of the same witness, and I will ask you whether or not the witness was asked this question:

"Now, as a matter of fact, Victor Decavitch was formerly district president of the UE, was he not?"

Was that question asked?

A. It was.

Q. And what answer was received?

A. "Again I have to assert my privilege under the Fifth Amendment to the United States Constitution, and Article I, Section 10 of the Constitution of the State of Ohio."

Q. Was there any other answer given to that question?

A. No, sir.

Q. Again referring to your notes on Talmage Raley, I will ask you whether or not this man was asked:

"Now, as a matter of fact that was the headquarters of Local 766 of the UE at that time, isn't that correct?"

Do your notes show that question?

A. Yes.

Q. What answer was received to that question?

A. "I again assert my privilege under the Fifth Amendment to the United States Constitution, and Article I, Section 10 of the Constitution of the State of Ohio."

Q. Was any other answer received to that question?

A. No, sir.

Q. Again referring to the testimony of the same witness, [fol. 73] I will ask you whether or not your notes show this question was asked:

"According to the Daily Worker for June 8, 1949, five United Electrical Workers issued statements—pardon me—issued protests against the jailing of Gus Hall, Henry Winston and John Gates, and it listed these five protestors as Lem Markland, Herbert Hershberg, Joe Sheetz, John Thomas, and Talmage Raley. Did you, as a UE leader issue a protest against the jailing of these three men?"

Was that question asked of him?

A. Yes, sir.

Q. What answer, if any, was received to that question?

A. "To that question, Mr. Counsel, I have to assert my

privilege under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution."

Q. Was any other answer given to that question?

A. No, sir.

Q. Again, in regard to this witness Raley, do your notes show that the following question was asked of him:

"Do you know Herbert Herschberg?"

A. That question was asked.

Q. What answer was received to that question?

A. "What are you trying to do, compile a blacklist or something?"

Q. Was any other answer received to that question?

A. The question was repeated, and this answer was made: [fol. 74] "My answer to that is the same as the previous answer. I assert the privileges."

Q. Was any further answer received to the question?

A. No, sir.

Q. Again referring to the testimony of the witness Raley, do your records show whether or not this question was asked:

"Do you know Joseph Sheetz?"

A. That question was asked.

Q. What answer, if any, was received?

A. "My answer is the same. I assert the privileges."

Q. Was any other answer received to that question?

A. No, sir.

Q. Again, in regard to the witness Raley, can you state whether or not this question was asked:

"Do you know John Thomas?"

A. That question was asked.

Q. What, if any, answer was received to that question?

A. "I assert my privilege under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio."

Q. Was any further answer given to that question?

A. No, sir.

Q. Again, in regard to the witness Raley, do your notes show this testimony? Will you state whether or not according to your notes he was asked this question:

[fol. 75] "As a matter of fact, every one of these individuals are leaders of the UE, or were leaders of the UE at that time, were they not, Mr. Raley?"

A. Can you tell me what page that was?

Q. Page 96, at the bottom of the page, and going over to the succeeding pages of the transcript or record.

A. Yes; that question was asked.

Q. Will you tell what, if any, answer was received to that question?

A. "My answer is the same. I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution."

Q. Again, in regard to the witness Raley, will you state whether or not this question was asked of him:

"Let me refer to an article carried in the Cincinnati Postmon September 13, 1949, captioned "Schools Trace Communist Propaganda, Union Agent denies Kits are Leftist," and refer to an interview with you. Do you recall that interview?

Was that question asked of the witness?

A. May I have the page?

Q. Page 99, line eleven, or thereabouts.

A. That question was asked.

Q. What, if any, answer was received?

A. "I will have to plead the privilege of the Fifth Amendment to the Constitution of the United States, and Article 1, [fol. 76] Article 10 of the Ohio Constitution."

Q. Was there any other or further answer given to that question according to your notes? I suggest you read further; there might be a further answer to that question.

A. The question was repeated to the witness, and there was some discussion with counsel, and the witness said, "If I recall correctly, at about three questions previous to this, Mr. Isaacs identified some supposed kits as procommunist literature kits distributed to the public schools of Cincinnati. This is a continuation of a series of questions dealing with the same alleged kit, and I believe that the privileges applied in that case, Mr. Chairman. However, I can consult with counsel to determine whether or not it does."

Q. You are still working on an answer to the same question?

A. Yes.

Q. This is in response to the same question. Will you read the entire response on that subject?

A. After some colloquy with counsel, the witness said "I have been advised by counsel that the privilege does apply if I desire to use it."

Q. Is that the end of that part of your notes given to that question?

A. That is a complete statement of the discussion in response to that question.

Q. Again, in regard to the witness Raley, I will ask you [fol. 77] whether or not your notes show he was asked this question:

"I wonder if you are familiar with or happen to know Jerome Joseph?"

A. That question was asked.

Q. What, if any, answer was received?

A. "To that, sir, I would have to assert the privilege."

Q. Was any further answer received to that question?

A. No, sir.

Q. Again, in regard to the witness Raley, do your notes show whether or not this question was asked:

"Victor Pasche, do you know him?"

Do you find whether or not that question was asked of the witness Raley?

A. That question was asked.

Q. What, if any, answer was received?

A. "To that sir, I would have to assert the privilege—" I am sorry. In answer to the question about Pasche, the answer was:

"My answer would be the same. I refuse to answer on the basis of the Fifth Amendment and the Ohio Constitution."

Q. Again referring to the testimony of Raley, following right along, can you state whether or not this question was asked the witness:

"Do you happen to know Herbert Siens?"

A. That question was asked.

[fol. 78] Q. What, if any, answer was received?

A. "To that, I assert the privilege."

Q. Was any further or other answer received to that question?

A. No, sir.

Q. Following right along, do your notes state whether or not this question was asked of the witness Raley:

"Do you happen to know Marie Reed Haug?"

A. That question was asked.

Q. What, if any, answer was received?

A. "I assert the privilege there, the Fifth Amendment and Article 1, Section 10 of the Ohio Constitution.

Q. Was any further or other answer received to that question?

A. No, sir.

Q. Again, in regard to the witness Raley, can you state whether or not this question was asked:

"Do you happen to know Paul Shepherd?

A. That question was asked.

Q. What, if any, answer was received?

A. "The answer is the same. I assert the privilege."

Q. Was any further or other answer received to the question?

A. No, sir.

Q. Again in regard to Raley, can you state whether or not your records show this question was asked:

"Isn't it a fact that the people I have just listed are all prominent in the leadership of the UE in Cleveland, Ohio?"

[fol. 79] A. That question was asked.

Q. What, if any, answer was received?

A. "My answer to that would be the same. I assert the privilege of the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Constitution of the State of Ohio."

Q. Was there any further or other answer given to that question?

A. No, sir.

Q. Again, with regard to the witness Raley, can you state from your records whether or not this question was asked:

"Who has a similar—holds your position in the Cleveland area at the present time with the union?"

Was that question asked of the witness?

A. May I have the page number.

Q. 110, Line 20.

A. Yes, sir; that question was asked.

Q. What, if any, answer was received?

A. "I think under that, Mr. Corrigan, I would have to assert my privilege under the Fifth Amendment and the Ohio Constitution, and refuse to answer."

Q. Was any further or other answer received to the question?

A. No, sir.

Q. Now, Mr. Hammock, do you have with you notes relative to the testimony of Reuel Stanfield?

[fol. 80] Mr. Schmidt: I might interrupt, to save time, we are perfectly willing to stipulate that the questions, as set forth of the various witnesses in these cases, were asked these of these defendants, and their answers or refusal to answer are as set forth in the transcript of the proceedings, which I understood this witness, himself made. We will stipulate that.

Mr. Hover: I appreciate the offer, your Honor, but most of the introduction of that part of the case has been given.

The Court: The court also appreciates the offer, but I have some misgivings whether or not there can be a stipulation about material facts in the case. All right, you may proceed.

Q. The question was whether or not you had with you the notes wit.. reference to the testimony of the witness Reuel Stanfield.

A. I do.

Q. Will you refer to those notes and state whether or not this question was asked of the witness Stanfield:

"Are you stating that you don't know whether the FTA was expelled from the CIO?"

Was that question asked of the witness?

A. That question was asked.

Q. What, if any, answer was received?

A. "I stand on my rights."

Q. Was there any other or further answer? Was that the [fol. 81] entire answer?

A. Yes, sir.

Q. Was there any other or further answer given to that question?

A. No, sir.

Q. Do you have with you your notes relative to the testimony of the witness Joseph Stern, whom you have identified here in the court room?

A. Yes, sir.

Q. Will you refer to those notes and state whether or not the following question was asked of the witness Stern:

"Where do you reside, Mr. Stern?"

A. That question was asked.

Q. What answer was received, if any?

A. "I wish to claim my privilege under the Fifth Amendment to the United States Constitution, and Section 1, Article 10 of the Ohio Constitution."

Q. Was any other or further answer received to that question according to your notes?

A. No, sir.

Q. Again referring to the witness Stern, will you refer to your notes and state whether or not this question was asked of that witness:

"I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this country?"

Was that question asked, Page 159?

A. Yes; that question was asked.

Q. What, if any, answer was received?

A. "I claim the privilege. I might also point out that [fol. 82] that is a smear against the political party which is running candidates in these elections, and I consider that this type of activity is typical of the political smears that this kind of committee carries on throughout the country."

Q. Was any further or other answer received to that question?

A. No, sir.

Q. Do you have with you the notes concerning the testimony of the witness Brown on the occasion of the October 20th hearings?

A. Yes, sir.

Q. Will you refer to those notes and state whether or not they show this question to have been asked of the defendant Brown:

"What has been your educational background?"

A. That question was asked.

Q. What answer, if any, was received?

A. "I refuse to answer that question. I invoke my rights and privileges under the Fifth Amendment."

Q. Did he give any further answer to that question?

A. No, sir.

Q. Again, in regard to the witness Brown, do your notes show whether or not this question was asked:

"Mr. Brown, were you ever employed by the Fisher Body plant at Norwood, Ohio?"

A. That question was asked.

Q. What, if any, answer was received?

[fol. 83] A. "The answer is the same."

Q. By that answer, you don't mean the answer is the same as you previously gave; that is the direct speech of the witness?

A. The direct quotation of the witness.

Q. Did you receive any further or other answer to that question from the witness?

A. No, sir.

Q. Again, and in regard to the witness Brown, will you refer to your notes and say whether or not this question was asked of him:

"Is there anything about being employed at that plant which might tend to incriminate you?"

A. That question was asked.

Q. What answer, if any, was received?

A. "The answer is the same."

Q. That again is the direct quotation of the witness?

A. Yes.

Q. Again, in regard to the witness Brown, do your notes show whether or not this question was asked:

"Were you active in 1947 in the election in the city of Cincinnati in supporting any candidate or any issue on the ballot in that election?"

A. Will you give me the page?

Q. 213, Line 13.

A. The question was asked.

[fol. 84] Q. What, if any, answer was received?

A. "I invoke the privilege of the amendment."

Q. Was there any other or further answer received to that question?

A. No, sir.

Q. Mr. Hanimock, the excerpts you have given us in your testimony of the witnesses named, are the people testifying at the time you took those cases of the defendants whom you have identified here in the court room?

A. Yes, sir.

Q. That is all.

* * * * * * *

[fol. 85] OFFERS IN EVIDENCE

Mr. Hoyer: I was looking for the Exhibits, your Honor. If the court please, I would like to offer in evidence Identifications 2, 3, 4, 5, resolutions of the Un-American Activities Commission in regard to each of the four defendants, directing its chairman to cause proceedings for contempt to be issued.

(Papers heretofore marked Identification Nos. 2, 3, 4, and 5, are introduced in evidence, marked Exhibits 2, 3, 4, and 5.)

Mr. Schmidt: I would like to offer at this time in evidence Identification 6. This Identification is the transcript of the October 20, 1952, proceedings.

(Record entitled Report on Cincinnati, Ohio, Hearings, is introduced in evidence, and is marked Exhibit 14.)

Mr. Hoyer: May the record show the complete testimony of the witnesses Abraham Biderman and the complete testimony of Philip Paleschnitzky is neither admitted nor received as evidence.

The Court: That is understood.

Mr. Schmidt: May I say this to your Honor, at the conclusion of the prosecutor's case—perhaps I am a little ahead of myself—I would like your Honor's permission to have the record show, on behalf of these four defendants, [fol. 86] that the defense makes a formal motion for a dismissal of these charges.

The Court: The court will take that under advisement and pass upon the motion in connection with the entire case.

Mr. Schmidt: We would like to offer in evidence Identification 7, being identified as the Report of the Un-American Activities Commission, State of Ohio, 1951-1952.

Mr. Hover: The State objects to that exhibit. It contains matter completely extraneous to this case, and it contains reference to matters that happened before and after the indictments. The statute required the commission to make a report of its findings. And I am objecting to its admission as an exhibit in this case.

The Court: I expect some parts are all right and some are not.

Mr. Hover: I think it is something the court may take judicial notice of, but I am objecting to it as an exhibit in the case for the record.

The Court: The court will take judicial notice of it, but will not admit it as an exhibit in the case.

Mr. Schmidt: That is all the material we have to offer at this moment. There is one other matter I want to bring to the court's attention. There was in the court room the counsel for the commission, Mr. Sidney Isaacs. He, as I understood it from the prosecutor, was called here to testify on behalf of the state. I was so informed by Mr. Hover [fol. 87] prior to the hearing, he would call Mr. Isaacs. Therefore, relying on that statement, I did not issue a subpoena for him. There are certain matters we desire to ask Mr. Isaacs that are particularly relevant and material to the issues here. Mr. Hover has changed his mind about calling him, apparently feeling it would be unnecessary to do so in his case. And we desire to obtain his presence here, or subpoena him if we can locate him, and I would like to ask your Honor's indulgence with regard to the presentation of that testimony.

The Court: The court will provide you with an opportunity to either ask him to come or issue a subpoena for his attendance. And the hearing in this case will be continued until Friday morning at ten o'clock.

(Court was thereupon adjourned until ten o'clock, A. M., December 18, 1953.)

[fol. 88] Morning Session, December 18, 1953

SIDNEY ISAACS, being first duly sworn, testified in behalf of the defendants as follows:

Direct examination.

By Mr. Schmidt:

Mr. Schmidt: I would like to state for the record, if your Honor please, we are calling this witness as if on cross-examination?

Mr. Hover: The state will object to any such procedure.

The Court: What authority would there be for calling private citizens as on cross-examination?

Mr. Schmidt: That this witness is, as we know, an official legal officer of the Ohio Un-American Commission and was such in 1952 when these hearings were held, and the statute entitles us to cross-examine him as an officer.

The Court: The plaintiff is the State of Ohio.

Mr. Schmidt: That is right, but he was an officer of the State of Ohio, as I understand it, under the officials of the Un-American Activities Commission, a body of the State, investigating various matters set forth in the statute. He actually conducted the examination which was the basis for these contempt proceedings, and asked specific questions [fol. 89] on which contempts have been based.

The Court: Well, you may ask the question, and I shall be as liberal as I can, but I can't stultify myself and say he may be called as a witness as on cross-examination under the statute, because I don't consider him to be in that category. I shall, however, be as liberal as I can with respect to the form and substance of the question.

By Mr. Schmidt:

Q. Will you state your name?

A. Sidney Isaacs.

Q. Your residence?

A. 6139 Ridge Avenue, Cincinnati.

Q. You are admitted as a member of the bar of the State of Ohio?

A. That is correct.

Q. You are now employed by the Ohio Un-American Activities Commission?

A. That is correct.

Q. In what capacity?

A. In the capacity of legal counsel, and legal director.

Q. That position, as I understand it, is specifically provided for by the statute?

A. That is correct.

Q. As legal director you have a staff under your supervision?

A. Yes, sir; two other men on the staff besides myself.

Q. Are they investigators in connection with your duties?

A. One has the title of chief investigator, although all [fol. 90] three of us are investigators.

Q. How long have you occupied that position?

A. Since the commission was established, which was in, I believe, October, 1951.

Q. Prior to October, 1951, what were your activities?

A. Well, I had been in the practice of law, and immediately prior to that I had been the chief counsel of the commission and subversive investigating committee which was a joint committee set up by the Ohio General Assembly to conduct an examination, and as a result of that investigation the Ohio Un-American Commission was created.

Q. How long did you occupy that position?

A. I believe the position lasted about, approximately six weeks to two months.

Q. In what year?

A. 1951.

Q. In 1950 did you have an official position with the State of Ohio?

A. No; I was engaged in the general practice of law in Cincinnati.

Q. You had previously, as I understand it, some official connection with the Federal Bureau of Investigation?

A. That is correct.

Q. You are the Mr. Isaacs who participated as the legal officer in this hearing of the Un-American Activities Commission that was held in Cincinnati, Ohio, October 20, 1952? [fol. 91] A. I am.

Q. I presume you prepared the matter in advance of coming here with respect to the questions to be asked the witnesses that were called on that day?

A. That is correct.

Q. You were investigating, of course, matters within the limits or confines of the functions given to your commission by the statutes of Ohio?

A. That is right.

Q. In general I might say that involved investigating certain illegal activities in the nature of efforts to overthrow the Government of the United States by force or violence. Is that generally correct?

A. Generally—

Mr. Hover: The work of the commission is well defined in the statute. It is nothing on which this witness has any right to testify.

The Court: If they are defined in the statute, I think it is an irrelevant question, and for that reason I sustain the objection.

Q. Was there any particular purpose in connection with that investigation of the Un-American Activities Commission calling or subpoenaed to the hearing October 20, 1952, these particular four co-defendants, Mr. Brown, Mr. Raley, Mr. Stern and Mr. Stanfield?

A. Yes; there was.

[fol. 92] Q. Will you tell us what that purpose was?

A. Our investigation indicated that these four individuals, together with the other two we subpoenaed at the same time, were in position to furnish information to the commission, consequently to the General Assembly which might be used in the intelligent consideration of laws to be considered or passed by the Ohio General Assembly.

Q. Can you state what particular type of evidence you felt on the basis of the information you had these particular witnesses could furnish?

Mr. Hover: I object.

The Court: The objection is overruled.

A. Yes; we were engaged in a study of the communist party in the State of Ohio. Our investigation indicated that

these individuals who were subpoenaed as witnesses were in a position to furnish information concerning the communist party in the State of Ohio.

Q. Is it a fact your investigation to which you have generally referred indicated that they were members of the communist party in the State of Ohio?

Counsel for the State objected, and the objection was sustained.

Q. Didn't you so state prior to the hearing that was held in Cincinnati?

Mr. Hover: I object. I think we have determined whether this witness is a defense witness, and consequently he is [fol. 93] not subject to leading questions.

Q. Didn't you state prior to the hearing held in that these four particular persons had been identified with the communist party?

Mr. Hover: I object. I think we have determined this witness is a defense witness, consequently he is not subject to leading questions.

Q. Did you state prior to the hearing that was held in Cincinnati that these four particular persons had been identified with the communist party.

Counsel for the State objected, and the objection was sustained.

Mr. Schmidt: Since the status of the witness was on direct or cross is not yet fully determined, I would like to make a proffer, If the witness were permitted—

The Court: Proffer on cross-examination, it is rather unique.

Mr. Schmidt: I understand the court has not ruled whether we are in cross or in direct. If we are on direct, I think I am permitted to make a proffer.

The Court: The court recognizes he was subpoenaed by the plaintiff.

Mr. Hover: He was subpoenaed by the plaintiff; he was not called as a witness by the state. Certainly the state's position wants to be completely consistent in this matter,

[fol. 94] but we are still of the opinion this is a defense witness.

The Court: I will be very practical about it, and you may take an objection and see what the witness's answer would be privately, and then you may make your proffer.

Mr. Schmidt: If permitted to answer, the witness would answer that he does not recall whether he made that statement or not.

Q. You have in your files, have you not, the testimony of one Cecil Scott?

Mr. Hoyer: I object as to what he had in his files.

The Court: I will sustain the objection.

Q. Did the testimony of Cecil Scott connect these particular defendants with any communist activities?

Counsel for the State objected; the objection was sustained, and counsel for defendants avowed the witness would answer, if permitted, "The testimony connected one of the defendants with the communist activities, and possibly a second. I am sure it did not mention the other two."

Q. Would you give us the names of those two?

A. It connected Talmage Raley, and, if I recall, possibly Emmett Brown, and I am sure it did not mention Stern or Stanfield.

Q. Did you state in 1950 to the Ohio Un-American activities commission or the Federal Government that you placed [fol. 95] some reliance upon the testimony of Cecil Scott and that he was a valuable source of information on communist activities?

Counsel for the State objected, and the objection was sustained.

Q. Did you or didn't you make it?

Counsel for the State objected, and the objection was sustained. Proffer: "This is a quotation contained in the Cincinnati Enquirer, which I assume is an accurate quotation from a letter which I addressed to Louis Russell, as Senior Investigator of the House Committee of the Un-

American Activities. My recollection is that this letter was written probably in March of 1950."

Q. You did or did not make the statement I asked you about? We have got the letter, but I don't want to put it into evidence, but we will continue the proffer as to whether you did or did not make the statement I asked you about?

A. I think I did. I think it was in March, 1950.

The Court: This is part of the proffer?

A. This is part of the proffer. That statement which was made in March, 1950, related to my contact with Cecil Scott during the last months of 1946. The statement you specifically asked me about referred to our contact with him in December or the latter part of November, 1946.

Q. Did you later change your opinion about the reliability [fol. 96] of this witness?

Counsel for the State objected, and the objection was sustained, to which counsel for defendants avowed the witness would answer, if permitted, "Never to any of the facts that he stated."

Q. Mr. Isaacs, you have the testimony of a man by the name of Victor Decavitch prior to the Cincinnati hearing?

A. No, sir.

Q. Or subsequent?

A. No, sir.

Q. Did you have any information as to Mr. Decavitch?

The Court: This is some person who did not appear?

Mr. Hover: Yes, sir; a person from whom the commission might have had information.

The Court: The objection is sustained.

Mr. Schmidt: Exception.

A. Mr. Decavitch had appeared before the Un-American House Committee along in July, 1950, and had prior to that time furnished information in connection with that inquiry. Although I talked to him, I received no information from him which was used in any of the inquiry that was made. However, his appearance before the House

Committee was a matter of record with the information he furnished. The House Committee report was published.

Q. You have that?

A. We have a copy of that in our files.

[fol. 97] Q. Didn't connect these defendants with certain communist activities?

A. I am sure it did not,—Talmage Raley—I know it did not mention any one else.

Q. You had collected in your files, had you not, the names of a great many people against whom there was suspicion of subversive or communist activity?

Mr. Hover: I object to the contents of the files.

The Court: The objection is overruled. He may answer if he had information. I think we all ought to assume they had some information or they would not have proceeded as they did.

Q. Under suspicion of subversive activities, is that right?

A. I think that would be accurate, at least, connecting them with subversive activities.

Q. Coming down to the hearings held in Cincinnati, where were they held, in what place?

A. In the Hamilton County court house. I forget the exact room number. It was one of the court rooms here.

Q. Was it in the court room that is largely set aside for criminal investigation or trial?

A. It was one of the largest court rooms, yes.

Q. This court room was at the other end of the building here on the third floor?

A. It was possibly in the court room in which Judge Hess [fol. 98] was sitting at that time, because I think at that time he was presiding in Common Pleas Court, and I approached him to set aside a court room for us.

Q. Were there news photographers present at the hearing?

Counsel for the State objected, and the objection was sustained.

Q. Were the proceedings broadcast on the radio?

A. No; they were not.

Q. Were these defendants represented by counsel there?

A. Some of them were, and some were not, as I recall.

Q. Did the commission adopt rules with respect to permitting counsel to appear on behalf of witnesses in these investigations?

A. Witnesses were always permitted to have counsel; yes.

Q. Were counsel permitted to participate in the procedure?

A. No; counsel was there to advise the witness and to consult with the witness.

Q. Your committee, the commission did limit counsel to that particular function, is that right?

A. That is the only function for which counsel was there; yes, to advise the witness on any matters that the witness chose to consult counsel; yes.

Q. That was due to a limitation imposed by the commission with respect to attorneys' activities, is that correct?

A. That is correct.

[fol. 99] Q. Did you know that one of the defendants, Mr. Stanfield, I believe it was, was immediately arrested by the Cincinnati police immediately on leaving the hearing on that day?

Counsel for the State objected, the objection was sustained, and counsel for defendants avowed the witness would answer, if permitted, yes.

Q. Did you know at the time you asked Mr. Stern this question, "Where do you reside, Mr. Stern?," which appears in the first count of the indictment against him, that a Mr. Frank Hashmall resided in that same residence with Mr. Stern?

A. No.

Q. After you asked the question I just referred to, the record shows on Page 163 of the transcript, you asked this question:

"As a matter of fact, in March, 1950, Frank and Sylvia Hashmall and their family moved in with you, didn't they?"

Counsel for the State objected, and the objection was sustained.

Q. Did you know, in fact, the answer to that question at the time you asked it?

Counsel for the State objected, and counsel for defendants avowed the witness would testify, if permitted, he did know the answer and that the answer was that Frank and Sylvia Hashmall had moved into the residence of Mr. Stern.

[fol. 100] Q. Who was Frank Hashmall, do you know?

Counsel for the State objected, and the objection was sustained, to which counsel for defendants excepted and avowed the witness would state, if permitted, that Frank Hashmall, in November, 1950, or prior thereto, was the head of the communist party in the State of Ohio.

The Witness: If the Court please, that is not the answer I would give.

The Court: You can call that to the attention of the prosecuting attorney. He will know what to do. So there is no private information given to the court in open court that counsel has not heard, the witness has told the court those would not be the answers he would give. You tell the correct answers to the prosecuting attorney and he will know the procedure, how to handle the matter.

Mr. Schmidt: I am sorry if I misquoted the answer.

Q. You were asked the question:

"I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this country?"

That question was asked Mr. Stern. I would like to ask you again what relevancy that had to the general subject under investigation by the Ohio Un-American Activities Commission?

Mr. Hover: It calls for the conclusion of the witness, and for that reason it is inadmissible.

The objection was sustained, and counsel for defendants excepted.

[fol. 101] Q. Are you in a position to state whether or not this Frank Hashmall, in 1952, in October, had any connection with the communist party?

Counsel for the State objected, and the objection was sustained.

Q. Do you have information in your file that Mr. Frank Hashmall had been connected with the communist party?

Counsel for the State objected, the objection was sustained, to which counsel for defendants excepted.

Q. This question also with reference to work in the Progressive Party in this county, do you know what the Progressive Party was?

Counsel for the State objected, and the objection was overruled.

Q. Will you state?

A. The Progressive Party, the one to which we are referring to, I believe, was originally founded at the time that Henry Wallace was running for president of the United States. Since that time the character and nature of the Progressive Party is somewhat changed and Henry Wallace, himself, repudiated.

Q. In 1952, October, and prior to that time, was the Progressive Party recognized legally and politically a political party entitled to representation on the ballot in the State of Ohio?

Mr. Hover: Objection.

A. My answer to that would be no, it was not.

[fol. 102] Q. Was that pursuant to a ruling of some state official, if you know?

A. No; it was because of the fact—

Mr. Hover: I object.

The Court: The objection is overruled.

A. It was because the progression party had been attempting, by that date in 1952, to secure the votes, and was unable to secure sufficient signatures in order to have their candidates placed on the ballot in the State of Ohio.

Q. Aside from their ability to get signatures in sufficient numbers, the question is, do you know the progressive party was a legal political party entitled to representation in the State of Ohio?

Counsel for the State objected, the objection was sustained.

Q. With respect to the indictment concerning Mr. Reuel Stanfield, you then asked this question "Are you stating that you don't know whether the FTA was expelled from the CIO?" What do you mean by the FTA?

A. Food and Tobacco Workers Union.

Q. Did you have information in your file prior to this hearing that union was connected, or any of its members, engaged in subversive activities?

Counsel for the State objected, the objection was sustained.

Q. With respect to the indictment of the defendant Em-
[fol. 103] mett Calvin Brown, you asked this question in the first count of the indictment or now appears in the first count of the indictment,

"What has been your education background?"

At the time you asked that question, I will ask you to state if you didn't have information in your file that this particular defendant had attended some school in Dayton, Ohio, connected with the communist party?

Question objected to by counsel for the State, and the objection was sustained.

Q. With respect to the question in the second count:

"Mr. Brown, were you ever employed by the Fisher Body plant, at Norwood, Ohio?"

At the time you asked that question, did you have any information in your file that Mr. Brown had carried on any political activities in the Fisher Body plant in Norwood?

Question objected to by counsel for the State, and the objection was sustained.

Q. Did you know at that time, or have information, to the effect that Mr. Brown had filed an erroneous affidavit in connection with his employment by the Fisher Body plant?

Counsel for the State objected, the objection was sustained.

Q. You asked in the fourth count this question:

"Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the
[fol. 104] ballot in that election?"

Did you consider your function as the investigator gave you the right to interrogate a person as to political activity in this community?

Counsel for the State objected, and the objection was sustained.

Q. Have you in your files, or did you have at the time you asked this question, any information connecting the defendant Brown's activities in 1947 in the city election with any illegal or improper activity?

Counsel for the State objected, and the objection was sustained, to which counsel for defendant excepted.

Q. With respect to the witness Raley, you asked in the various counts of the indictment whether he was acquainted with various persons whom you named. Do you recall that?

A. I did not.

Q. Sir?

A. I didn't ask those questions.

Q. They were asked at the hearing?

A. The ones concerning certain individuals up in Cleveland were asked by Representative Corrigan, from Cleveland, Ohio, now Judge Corrigan.

Q. Among those names are these—I will give you this list: Gus Hall, Henry Winston, John Gates, Lem Markland.

A. Those questions I asked. The ones you are reading now, I asked.

Q. Herbert Hirschberg, Joseph Sheetz, John Thomas. Do [fol. 105] you know who those men are?

Counsel for the State objected, and the objection was sustained, to which counsel for defendants excepted, and avowed the witness would state, if permitted, that he had information in his file to the effect that these men were all connected with communist activities.

Q. On the eighth count of the indictment you asked with respect to this subject:

"As a matter of fact, every one of these individuals are leaders of the UE, or were leaders of the UE at that time, were they not, Mr. Raley?"

What was the UE?

A. The initials of United Road Machine Workers of America. It was a trade union, formerly part of the CIO, expelled from the CIO in 1949.

Q. On what ground?

A. On the ground it was a communist controlled and communist dominated union.

Q. Is it a fact you had testimony in your files to the effect that UE on October 20, 1952, and prior thereto, was still dominated by officers who were affiliated with the communist party?

Counsel for the State objected; the objection was sustained, to which counsel for defendants excepted, and avowed, if the witness were permitted to answer, he would say, yes.

[fol. 106] Q. There are some other names here. I would like to ask with respect to these names; Mr. Jerome Joseph, Mr. Victor Pasche, Mr. Herbert Siens, Marie Reed Haug, Paul Shepherd. Do you know who those people were?

A. These are the names you referred to before. Concerning these individuals, the questioning was done by Representative John Corrigan.

Q. Will you state whether or not those persons in any way had connection, according to the information in your files, with the communist activities?

Counsel for the State objected; the objection was sustained, and counsel for the defendants avowed the witness would testify, if permitted, that those named individuals had at that time or prior thereto, connections with the communist party.

Mr. Schmidt: That is all.

Mr. Hover: No questions, your Honor.

(Thereupon the defendants rested.)

(Thereupon, the state rested.)

(The foregoing testimony, with the exhibits herein referred to, was all the evidence introduced on the trial of this cause.)

* * * * * * *

[fol. 108]

STATE'S EXHIBIT No. 1

MINUTES
of the organization meeting of the
UN-AMERICAN ACTIVITIES COMMISSION
Wednesday, September 19, 1951

The first meeting of the Un-American Activities Commission was called to order at 2:00 p.m., in the office of the Speaker of the House, by Mr. Kenneth A. Robinson, who acted as temporary chairman. Present: Messrs. Bartunek, Blackburn, Carney, Headley, Walcutt, Corrigan, Renner, Robinson, Schneider, constituting a quorum. Absent: Messrs. Powell, Devine and Reider.

Mr. Robinson stated that while he had served as chairman of the Anti-Subversive Investigating Committee of the 99th General Assembly he would not be a candidate for the office of chairman of the Un-American Activities Commission. He then announced that the first order of business would be the election of officers and called for nominations for the office of chairman. Mr. Schneider nominated Mr. Renner. This was seconded by Mr. Bartunek. There being no further nominations, the nominations were closed and Mr. Renner was declared elected chairman.

Mr. Robinson then turned the meeting over to Mr. Renner as presiding officer. Mr. Renner called for nominations for the office of vice-chairman. Mr. Robinson nominated Mr. Bartunek, which nomination was seconded by Mr. Blackburn. There being no further nominations, the nominations were closed and Mr. Bartunek was declared elected vice-chairman.

Mr. Renner then called for nominations for the office of secretary. Mr. Carney nominated Mr. Devine, with Mr. Schneider seconding the nomination. There being no further nominations, the nominations were closed and Mr. Devine was declared elected secretary.

Mr. Renner moved that a Committee on Personnel, consisting of three members to be named by the chair, be created for the purpose of screening and recommending to the

commission such employees as were found necessary for the efficient operation of the commission. The motion carried. The chair appointed Mr. Robinson chairman, and Messrs. Bartunek and Devine members of this committee.

Pursuant to Section 76-34 of the Act establishing the commission, which states, "the commission shall formulate such rules of procedure and policies to be followed in the performance of its duties and functions as it may deem necessary and appropriate," Mr. Bartunek moved that a Committee on Policy, consisting of three members to be appointed by the chair, be created to make recommendations to the commission. The motion was carried.

Mr. Carney moved that a Committee on Rules, consisting, [fol. 109] of three members appointed by the chair, be created to draft and recommend to the commission a set of rules for the governing of the commission. Motion carried.

It was moved by Mr. Bartunek, and seconded by Mr. Robinson, that the services of Mrs. Margaret Moorhous as office secretary be continued effective September 18, 1951, at a salary of $300 a month, until such time as the Committee on Personnel made its recommendations. Motion carried.

Mr. Bartunek moved that the chairman be empowered to take whatever actions were necessary to expedite the operation of the commission, this motion being seconded by Mr. Corrigan. Motion carried. It was decided that the work on the card index file should be continued.

It was determined that no action would be taken relative to setting up the machinery and physical setup of the commission until counsel could be appointed. No plans were made for the holding of future meetings of the commission other than it meet quarterly, as prescribed by the Act, or otherwise subject to the call of the chair.

A general discussion of the Rugg incident was held and Mr. Renner stated the commission would probably consider this incident when the commission is organized and fully established.

News releases, it was decided, would be given out by the chairman. It was emphasized that the commission would

Un-American Activities Commission whose signatures are appended thereto and who were present at said hearing.

/s/ Gordon Renner
Chairman

/s/ Samuel L. Devine
Secretary

[fol. 113]

State's Exhibit No. 4

RESOLUTION

Whereas Joseph Stern was lawfully subpoenaed to appear before the Ohio Un-American Activities Commission for the purpose of giving his testimony in matters relating to the investigation conducted by the Commission; and

Whereas Joseph Stern did, pursuant to subpoena, appear at a hearing of the Commission on the twentieth day of October, 1952; and

Whereas the members of the Commission present at such hearing were Gordon Renner, Leo Blackburn, John V. Corrigan, Samuel L. Devine and Kenneth A. Robinson, as shown by the record of said hearing; and

Whereas at this hearing Joseph Stern refused to answer numerous questions propounded to him by members of the Commission and by the legal director of the Commission in violation of law: Therefore be it

Resolved, That the chairman of the Commission be and is hereby authorized and directed to cause a proceeding for contempt to be filed and prosecuted in the Common Pleas Court of Hamilton County against said Joseph Stern in accordance with law.

/s/ Gordon Renner
Gordon Renner, Chairman

/s/ Leo Blackburn
Leo Blackburn

/s/ John V. Corrigan
John V. Corrigan

/s/ Samuel L. Devine
Samuel L. Devine

.....
Kenneth A. Robinson

The foregoing is a correct copy of a Resolution duly adopted on December 17, 1952, by the members of the Ohio Un-American Activities Commission whose signatures are appended thereto and who were present at said hearing.

/s/ Gordon Renner
Chairman

/s/ Samuel L. Devine
Secretary

[fol. 114]

State's Exhibit No. 5

RESOLUTION

Whereas Talmadge Raley was lawfully subpoenaed to appear before the Ohio Un-American Activities Commission for the purpose of giving his testimony in matters relating to the investigation conducted by the Commission; and

Whereas Talmadge Raley did, pursuant to subpoena, appear at a hearing of the Commission on the Twentieth day of October, 1952; and

Whereas the members of the commission present at such hearing were Gordon Renner, Samuel L. Devine, John V. Corrigan, Leo Blackburn, Louis J. Schneider, Jr., Kenneth A. Robinson, and James G. Headley, as shown by the record of said hearing; and

Whereas at this hearing Talmadge Raley refused to answer numerous questions propounded to him by members of the Commission and by the legal director of the Commission in violation of law: Therefore be it

Resolved, That the chairman of the Commission be and is hereby authorized and directed to cause a proceeding for contempt to be filed and prosecuted in the Common Pleas Court of Hamilton County against said Talmadge Raley in accordance with law.

attempt to be as fair as possible with the members of the press and that no favoritism would be shown to any particular group.

Mr. Renner stated that a copy of the minutes of each meeting of the commission would be sent to each member, and that an effort would be made to keep the members informed about the activities of any committees or subcommittees of the commission.

Mr. Schneider suggested that a tape recorder be tried both for commission meetings and open hearings. Mr. Robinson felt it was important to have someone not connected with the commission take testimony in the hearings. He felt this was established in the case of the three witnesses who refused to testify and whose names were referred to the Franklin County Grand Jury for possible prosecution. After a discussion on what the next step would be in connection with the indictment of these three witnesses by the Grand Jury, it was the consensus that the commission would press for their arrest.

Mr. Bartunek moved that the chairman of the commission request custody of the records of the Joint Anti-Subversive Investigating Committee of the 99th General Assembly from the Clerk of the House, Mr. Guess. This was seconded by Mr. Robinson, and the motion carried.

[fol. 110] After a discussion on departmentalizing the work of the commission in the matter of hearings, it was decided that the committee on policy should study and make recommendations on this matter.

No further business coming before the meeting, the same was adjourned after a motion duly made, seconded, and carried.

/s/ Gordon Renner
Chairman

[fol. 112] STATE'S EXHIBIT No. 3

RESOLUTION

WHEREAS Emmett Calvin Brown was lawfully subpoenaed to appear before the Ohio Un-American Activities Commission for the purpose of giving his testimony in matters relating to the investigation conducted by the commission; and

WHEREAS Emmett Calvin Brown did, pursuant to subpoena, appear at a hearing of the Commission on the Twentieth day of October, 1952; and

WHEREAS the members of the Commission present at such hearing were Gordon Renner, Leo Blackburn, John V. Corrigan, Samuel L. Devine, Kenneth A. Robinson and Louis J. Schneider, Jr., as shown by the record of said hearing; and

WHEREAS at this hearing Emmett Calvin Brown refused to answer numerous questions propounded to him by members of the Commission and by the legal director of the Commission in violation of law: Therefore be it

RESOLVED, That the chairman of the Commission be and is hereby authorized and directed to cause a proceeding for contempt to be filed and prosecuted in the Common Pleas Court of Hamilton County against said Emmett Calvin Brown in accordance with law.

/s/ GORDON RENNER
Gordon Renner, Chairman

/s/ LEO BLACKBURN
Leo Blackburn

/s/ JOHN V. CORRIGAN
John V. Corrigan

/s/ SAMUEL L. DEVINE
Samuel L. Devine

.....
Kenneth A. Robinson

/s/ LOUIS J. SCHNEIDER, JR.
Louis J. Schneider, Jr.

The foregoing is a correct copy of a Resolution duly adopted on December 17, 1952, by the members of the Ohio

/s/ GORDON RENNER
Gordon Renner, Chairman

/s/ LEO BLACKBURN
Leo Blackburn

/s/ JOHN V. CORRIGAN
John V. Corrigan

/s/ SAMUEL L. DEVINE
Samuel L. Devine

.....
Kenneth A. Robinson

/s/ LOUIS J. SCHNEIDER, JR.
Louis J. Schneider, Jr.

/s/ JAMES G. HEADLEY
James G. Headley

The foregoing is a correct copy of a Resolution duly adopted by the members of the Ohio Un-American Activities Commission whose signatures are appended thereto and who were present at said hearing.

/s/ GORDON RENNER
Chairman

/s/ SAMUEL L. DEVINE
Secretary

[fol. 115]

STATE'S EXHIBIT No. 10

REQUEST FOR INSTITUTION OF PROCEEDINGS FOR CONTEMPT

I, Gordon Renner, Chairman of the Ohio Un-American Activities Commission, present herewith to the Prosecutor of Hamilton County a Resolution duly adopted on December 17, 1952, by a majority of the members of said Commission who were present at a hearing of the Commission held in Cincinnati, Ohio, the Twentieth day of October, 1952, at which hearing Emmett Calvin Brown appeared to give his testimony to the Commission. I present, herewith, also, a transcript of the testimony so given to the Commission by said Emmett Calvin Brown.

Pursuant to the provisions of Section 76-32 of the General Code of Ohio, I hereby request the Prosecutor of Hamilton County to institute proceedings for contempt against said Emmett Calvin Brown, and to prosecute such proceedings in accordance with law.

/s/ GORDON RENNER
Chairman

Last known address of EMMETT CALVIN BROWN:
3158 Harvey Avenue
Cincinnati, Ohio

[fol. 117]

STATE'S EXHIBIT No. 12

REQUEST FOR INSTITUTION OF PROCEEDINGS FOR CONTEMPT

I, Gordon Renner, Chairman of the Ohio Un-American Activities Commission, present herewith to the Prosecutor of Hamilton County a Resolution duly adopted on December 17, 1952, by a majority of the members of said Commission who were present at a hearing of the Commission held in Cincinnati, Ohio, the Twentieth day of October, 1952, at which hearing Joseph Stern appeared to give his testimony to the Commission. I present, herewith, also, a transcript of the testimony so given to the Commission by said Joseph Stern.

Pursuant to the provisions of Section 76-32 of the General Code of Ohio, I hereby request the Prosecutor of Hamilton County to institute proceedings for contempt against said Joseph Stern, and to prosecute such proceedings in accordance with law.

/s/ GORDON RENNER
Chairman

Last known address of JOSEPH STERN:
3595 Wilson Avenue
Cincinnati, Ohio

[fol. 118]

STATE'S EXHIBIT No. 13

REQUEST FOR INSTITUTION OF PROCEEDINGS FOR CONTEMPT

I, Gordon Renner, Chairman of the Ohio Un-American Activities Commission, present herewith to the Prosecutor of Hamilton County a Resolution duly adopted on December 17, 1952, by a majority of the members of said Commission who were present at a hearing of the Commission held in Cincinnati, Ohio, the Twentieth day of October, 1952, at which hearing Talmadge Raley appeared to give his testimony to the Commission. I present, herewith, also, a transcript of the testimony so given to the Commission by said Talmadge Raley.

Pursuant to the provisions of Section 76-32 of the General Code of Ohio, I hereby request the Prosecutor of Hamilton County to institute proceedings for contempt against said Talmadge Raley, and to prosecute such proceedings in accordance with law.

/s/ GORDON RENNER
Chairman

Last known address of TALMADGE RALEY:
RR #1, Box 388-B
Sharonville, Ohio

[fol. 120]

Exhibit 14

REPORT ON CINCINNATI OHIO HEARINGS OF OCTOBER 20, 1952

Meeting of the Ohio Un-American Activities Commission, held in the Hamilton County Court House, Cincinnati, Ohio, on Monday, October 20, 1952, Chairman Gordon Renner presiding.

PRESENT:

Gordon Renner, Chairman
Samuel Devine, Secretary
Sidney Isaacs, Legal Director
John V. Corrigan
Leo Blackburn
Louis J. Schneider, Jr.
Kenneth A. Robinson
Headley

[fol. 121] PROCEEDINGS

STATEMENT OF CHAIRMAN RENNER

Chairman Renner: The Commission will come to order. The secretary will note the names of the members present.

The Chair finds a quorum present.

Before calling the first witness, the Chair desires to make a statement for the record. The statement is as follows:

Several of the witnesses subpoenaed to testify at this hearing today, and the United Electrical Workers, Local 766, have publicly asserted that our commission purposely set the date for this hearing just two weeks before Election Day in order to gain some personal political advantage thereby.

This is a deliberate lie. For the record, I wish to state the facts.

By Commission action, the date for this Cincinnati hearing was set for last June 9. Several subpoenas were issued by me and delivered to the office of the Hamilton county sheriff for service. After serving one witness, the subpoena servers failed to find any other witnesses. With only one witness served, the Commission deemed it wise to postpone the hearing. It has since been learned through literature by Local 766 of the United Electrical Workers that on June 6, the United Electrical Workers local leadership met and voted not to cooperate with the Commission. Apparently, this decision not to cooperate extended not only [fol. 122] to directing its members to refuse to answer

questions on the witness stand, but also to escape service of lawfully issued subpoenas.

Had it not been for their eluding of service by concerted action, this hearing would have been held and ended over three months ago.

I then asked counsel for the Commission to make another effort to procure witnesses for a Cincinnati hearing on a date to be fixed by him alone, such dates to be withheld even from the members of the Commission themselves, until after the witnesses had been subpoenaed.

Again, I issued several subpoenas for September 15, the date fixed by counsel, which were delivered to the office of the Hamilton county sheriff for service. Again, personal service was had on only one witness, and the others were not found. Again, it was deemed wise to postpone the hearing as a result of the planned uncooperative action of the witnesses.

Several days later, the Commission, meeting in Columbus, authorized members of the staff of the Commission to serve subpoenas, and authorized the holding of a hearing in Cincinnati on a date to be fixed by counsel. As chairman of the Commission, I issued a number of subpoenas and delivered them to Mr. Isaacs for service upon the witnesses. [fol. 123] Thereafter, Mr. Isaacs came to Cincinnati accompanied by our chief investigator, Mr. Worster, and on the first day, secured personal service on five witnesses.

The chairman then called the meeting to be held in Cincinnati on the date fixed by Mr. Isaacs; namely, October 20. Subsequently, Mr. Isaacs served a subpoena upon six witnesses. The record illustrates the kind of fraud and deception these people practice.

While this commission is wholly desirous of protecting the reputations of innocent people, it will not be swayed from the performance of the duties imposed upon it by the Legislature by the accusations or demands or threats of people who fear exposure of unAmerican activities conducted in secret, contrary to the interests of this state of this country.

. . . . . .

[fol. 124] TALMADGE RALEY being first duly sworn, was examined and testified as follows:

By Mr. Isaacs:

Q. State your name, please.
A. Talmadge Raley.
Q. Where do you live?
A. Route 1, Sharonville, Ohio.
Q. How long have you been a resident of the state of Ohio?
A. Approximately thirty-one years.
Q. In a general way, what has been your educational background?
A. I attended grammar school at the place of my birth in Kentucky. After moving to Ohio, I attended further grammar school at Elmwood Place, Ohio. After completing grammar school, I found it necessary to go to work.

Sometime later—I don't remember the dates—I attended the Miller Business College here in the city of Cincinnati at night school for a few months. I don't remember the [fol. 125] length of time. Then, other than that, the only other education I have had has been that which I gathered while I was in service with the United States Air Forces in the technical training school of that service.

Q. Since the completion of your formal education, what has been your employment background?
A. About 1925, I think the first full-time employment I had was with the—I think it was known as the old Cincinnati Porcelain Company, which I don't believe exists any more.

After that, I worked for the Snow-King Baking Powder plant out in Winton Place. I worked for the—what was known in those days as the old Wire-Bound Box Company out in St. Bernard.

I spent a fall in the state of Illinois, going through a corn harvest. I came back and secured employment at Emory Industries.

I left that employment in the early thirties, was again reemployed by the same box manufacturer. The name had changed; it was now the General Box Company.

From there, I went to the Formica Insulation Company in Winton Place. I left there and accepted employment with the union.

I was a member of the United Electrical, Radio and Machine Workers. I was an organizer, which was interrupted for almost two years in the service of the United [fol. 126] States Air Forces.

I returned from service in, I think it was November of 1946, and resumed my employment with the union, United Electrical, Radio and Machine Workers, with whom I am presently employed.

Q. What is your capacity with the union, the United Electrical Workers, at the present time?

A. I am a field organizer.

Q. Over what territory does that cover?

A. My assignment is the Cincinnati area.

Q. Are you also business agent for Local 766?

A. At one time, I was.

Q. You are not business agent at the present time?

A. I am not now.

Q. What are the plants in the Cincinnati area over which the UE has bargaining jurisdiction at the present time?

A. Might I ask—I am just curious—what the purpose of the question is? I have a feeling, you know, that an answer to the question pin-pointing the plants that we represent, you know, is going to be used, if not by this commission, by the newspapers, you know, for the purpose of adverse publicity affecting the workers in the plant that we represent. I am just curious.

Chairman Renner: Isn't it a matter of record?

The Witness: Certainly it is a matter of record, but it [fol. 127] just seems to me like, you know, for the purpose of publicity, if I name them here, enumerate them, that it will be used possibly for adverse publicity in plants affecting those workers.

By Mr. Isaacs:

Q. We want it as a matter for the record, Mr. Raley.

Chairman Renner: Will you answer the question, please?

The Witness: For the record, American Steel Foundries, the J. H. Day Company, the K. D. Lamp Company, the Wesche Electric Company, the Decca Distributing Company, and the General Electric Apparatus Service Shop.

By Mr. Isaacs:

Q. Now, do you know at the present time who represents the Shott Manufacturing Company?

A. Our organization does not.

Q. I am talking about your organization. In other words, the United Electrical Workers is not the bargaining agent at the present time at the Shott Manufacturing Company?

A. That is correct.

Q. Were you at any time the bargaining agent for the Shott Manufacturing Company? That is, were the United Electrical Workers the bargaining agent?

A. We were.

Q. Do you know what union is the bargaining agent at the present time?

[fol. 128] A. No, I don't.

Q. Do you know whether it is an AFL or CIO union?

A. The only thing I know is that the membership changed their affiliation from our union to an AFL union. What it is today, I don't know.

Q. How about the Bossert Machine Tool Company?

A. What about them?

Q. Has the United Electrical Workers been the bargaining agent in the past?

A. We were at one time.

Q. Do you know what the present affiliation of the members at that plant are at the present time?

A. I do not.

Q. Do you know whether it is an AFL or CIO union?

A. I do not.

Q. Is it one or the other?

A. I have no idea.

Q. Did you take part in the election at the Bossert Machine Tool Company?

A. I believe I was in service at the time. I don't remember.

Q. How about the American Tool Works? Was the United Electrical Workers the bargaining agent at that plant?

A. We were at one time.

Q. Do you know who the bargaining agent is at the [fol. 129] present time?

A. Do you mind if I ask counsel something? There is a question in my mind as to the purpose of the question.

(The witness conferred with counsel.)

Chairman Renner: The record will show that the witness has consulted counsel.

The Witness: Your last question?

By Mr. Isaacs:

Q. The last question was: Do you know what union is the bargaining agent at the American Tool Works?

A. I believe that they are represented now by the United Steel Workers, CIO.

Q. Of the CIO?

A. Yes.

Q. Is the same also true for the G. A. Gray Company?

A. What do you mean by "the same"?

Q. That it was formerly represented by the UE, and is now represented by the United Steel Workers, CIO?

A. There is still a question in my mind as to the purpose of these particular questions, as to whether or not they are relevant to the purpose for which I was supposedly called. I have always believed, as you know, and probably have heard, that this committee was doing things that was to destroy unions, and I am just wondering if the questions are for the purpose of giving adverse publicity to either the [fol. 130] workers or the organization in those plants.

Q. Following your line, then, perhaps I can clarify this. I want to ask you about the American Tool Works, the G. A. Gray Company, the Lodge & Shipley Company, Heekin Can Company, the Formica Insulation Company, the Breese Brothers Company, the Cincinnati Time Recorder Company, Columbia Recorder Company, and Allis-Chalmers Company.

In each instance, I will ask you if the United Electrical Workers was not at one time the bargaining agent and at the present time, each of those plants is represented either by an American Federation of Labor union or a CIO union?

A. What pertinence has that for the reason for being here? I am just trying to figure out if the purpose is compiling some statistics for the employers, and so forth, for the purpose of agitation on union-busting in the plants.

Chairman Renner: Mr. Raley, I believe in each case, the employers know what the situation is already. The Commission desires to know for its record, and I think it is properly within the scope of our investigation.

Mr. Corrigan: Mr. Chairman, I wonder if the witness thinks the activities of the AF of L and CIO, whether or not he classifies that as union-busting.

The Witness: Well, there are a number of interpretations of union-busting. We would have to go into the whole [fol. 131] definition in order to answer the question.

Mr. Corrigan: You don't want the record to show that you are calling the AF of L and the CIO union busters?

The Witness: I am not.

By Mr. Isaacs:

Q. In discussing union busting, in the Cincinnati area where the UE formerly was the bargaining agent; and is no longer the bargaining agent, there is either an American Federation of Labor union or a CIO union in that shop at the present time?

A. Frankly, I don't know. I can say whether I know or not they are represented by our organization, but as to accurately stating that the workers in those plants are represented by one or another organizations today, I couldn't.

Q. Are you stating as field organizer for the United Electrical Workers you don't know the bargaining agents in the plants which were formerly UE plants?

A. Not in all of them, I don't. In some of them, I do. At least, I understand that they are represented by certain organizations.

Q. Do you know any plant formerly represented by the UE which is not represented at the present time by a legitimate American trade union organization?

A. There is a question in my mind. I don't know the names of all of them that you listed there. There is a [fol. 132] question in my mind on some of them, yes.

Q. Whether the AFL or the CIO is a legitimate American trade union organization?

A. Now, you are trying to twist my words around, Mr. Isaacs. I didn't say that.

Q. Would you clarify your answer?

Chairman Renner: You did say one of the functions of this commission was to engage in union-busting, did you not?

The Witness: I think I said that I had been of the opinion that the activities of commissions of this kind have been used for that purpose.

Chairman Renner: We are attempting to find some substance from which you might draw that opinion, Mr. Raley.

The Witness: Well, if he would name the plants, for example, he has already asked me about one plant.

Chairman Renner: I think he has asked about several.

The Witness: I said I did not know what the representation is at this present time.

Chairman Renner: Proceed.

By Mr. Isaacs:

Q. I have named ten plants in the Cincinnati area, the Shott Manufacturing Company, Bossert Machine Tool Company, American Tool Company, G. A. Gray Company, Lodge & Shipley, Heekin Can Company, Formica Insulation Company, Breese Brothers Company, Cincinnati Time [fol. 133] Recorder Company, Columbia Recording Company, and Allis-Chalmers. That is eleven plants in which the UE was formerly the bargaining agent.

Now, in any of those plants, do you know of a single one which is not now represented by a ligitimate American trade union organization?

A. To the best of my knowledge, when the membership

in any of the plants named changed their affiliation from our organization, an independent or company union assumed bargaining rights for the workers at the Cincinnati Time Recorder Company. I was told that an independent or company union assumed bargaining rights for the Bossert Machine Company workers.

Q. Do you know whether they are not now affiliated with either the AF of L or the CIO?

A. I do not know. I was told at the time of change of affiliation that the workers at the Breese Manufacturing Company were represented by a company union.

Q. Do you know if it is now affiliated with the AF of L or the CIO?

A. Whether that condition exists today or not, I do not know.

Q. But in any of those eleven plants, has the ousting of the UE resulted—has the result been union-busting?

A. Again, I think it depends on your definition of "union-busting".

Q. Now, Mr. Raley, as an official of the United Electrical [fol. 134] Workers, is there any concern among the officials of the possible presence of Communist Party members among the leadership of the UE?

A. I must assert the privilege of the Fifth Amendment of the Constitution and Article I, Section 10, of the Ohio Constitution, and refuse to answer.

Q. Now, Mr. Raley, in all of the plants in which the UE is the bargaining agent in this area, they are working on vital war contracts; is that not true?

A. Just a second, please.

(The witness conferred with counsel.)

The Witness: The question there is in all instances, I don't know. I have no way of knowing. The companies do not submit to me, you know, the orders they receive, the customers for whom those orders are placed, so whether they are considered war orders or not, I have no way of knowing.

By Mr. Isaacs:

Q. If there were vital war contracts in these Cincinnati defense plants, would your union regard it as a source of danger to those plants and to the country if there were Communists working on those contracts?

A. Again, I must assert the privileges of the Fifth Amendment of the United States Constitution and Article I, Section 10, of the Ohio Constitution.

Q. Have the United Electrical Workers ever taken any [fol. 135] stand in regard to Communism and members of the Communist Party?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Have you personally, Mr. Raley, ever taken any stand in regard to the question of support for or antagonism towards the Communist Party?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Are you saying that a correct answer to that question might subject you to criminal proceedings?

A. That, Mr. Isaacs, is the same type of question as the one preceding, and I must again assert my privileges.

Q. I am asking you now if you are or have ever been a member of the Communist Party?

A. I must again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. What is the basis for your refusal to answer that question?

A. I must again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio, in refusing to answer that question.

[fol. 136] Q. On July 14, 1950, at a hearing of the Un-American Activities Committee, of the House Un-American Activities Committee, Victor Decavitch identified you to your face as a member of the Communist Party. Do you know Victor Decavitch?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Now, as a matter of fact, Victor Decavitch was formerly district president of the UE, was he not?

A. Again, I have to assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Chairman Renner: Isn't that a matter of record, Mr. Raley?

The Witness: In answer to that question, I have to assert my privileges, Mr. Chairman.

Chairman Renner: Would you explain just how it could possibly incriminate you to answer the question, whether or not it is of record that Victor Decavitch was at one time head of District 7 of the United Electrical Workers?

The Witness: I don't think that I am required to explain my reason for asserting the privilege, so, again I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of [fol. 137] the Constitution of the State of Ohio.

Chairman Renner: You refuse to answer the question?

The Witness: On the basis of my privileges as granted by those documents.

By Mr. Isaacs:

Q. Do you recall that on the 14th of July, 1950, Victor Decavitch, under oath, accused you to your face of being a member of the Communist Party?

A. Again, I assert the privilege.

Q. Did you make any answer to Decavitch at that time?

A. I assert the privilege under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. Do you know Marjorie Gruss?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. As a matter of fact, Marjorie Gruss was formerly your secretary at the UE, was she not?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. Now, on July 15, 1950, Marjorie Gruss, testifying before the House Un-American Activities Committee, the American House of Representatives, accused you to your [fol. 138] face of having been a member of the Communist Party, and stated that you made her join the Communist Party to keep her job with the UE, and that, subsequently, she attended Communist Party meetings with you in the city of Cincinnati. Is that a true statement?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Did you ever make any denial, either under oath or not under oath, as to the truth of the statement by Marjorie Gruss?

A. Again, I have to assert my privileges.

Q. Do you know Robert Gunkel?

A. I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. Is he a Communist?

A. Again, I assert my privileges.

Q. As a matter of fact, Robert Gunkel for a long time was the Communist Party organizer here in Hamilton county, was he not?

A. My answer is the same. I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. I ask you, Mr. Raley, if it is not a fact that on Jan- [fol. 139] uary 3, 1947, you attended a Communist Party meeting at the home of Robert Gunkel, who then lived at 235 Albion Place in Cincinnati?

A. Would you repeat the time and the address?

Q. On January 3, 1937, I am asking you whether or not on that date you did not attend a meeting of the Communist Party held at the home of Robert Gunkel, 235 Albion Place, in the city of Cincinnati?

A. Again, I assert my privileges under the Constitution of the United States, and the Ohio Constitution.

Q. Is it not a fact that, at that meeting, you took part in the discussion on Section 2 of the Communist Manifesto?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Did you ever hold any Communist Party meeting in the UE office in the Bell Block in Cincinnati?

A. I again assert my privileges.

Q. I ask you if it is not a fact that on January 24, 1947, you attended a meeting in the UE office at 506 Bell Block at which time Robert Gunkel presided?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that the Communist [fol. 140] Party meetings were moved from Gunkel's home into the UE office because Gunkel's landlord objected to having Communist Party meetings held in that building?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask if it is not a fact that on January 31, 1947, you attended a Communist Party meeting in the UE office at which Robert Gunkel, Communist Party organizer, presided?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Did Robert Gunkel at that time have any official connection with you?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that on February 22, 1947, you attended a Communist Party meeting held at the UE office at which Robert Gunkel presided?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that Robert Gunkel led the discussion which centered around the dual respon-

[fol. 141] sibility of UE organizers to both the UE and the Communist Party?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that on March 31, 1947, you attended a Communist Party meeting at which Robert Gunkel presided?

A. Did you name the place of this supposed meeting?

Q. I did not.

A. Just March 31, 1947?

Q. Yes.

A. My answer is the same; I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I ask you if it is not a fact that at that Communist Party meeting, the principal discussion was on the postwar international situation; the discussion was led by Esther Tice?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Do you know Esther Tice?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

[fol. 142] Q. I ask you if at that same Communist Party meeting, you did not lead a discussion on the subject, "The Approval of an Economic Crisis," discussing the role the Communist Party would play in a coming depression?

A. I must assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that at that same meeting of the Communist Party, you stated that you would make a donation of $10 to the Communist Party Defense Fund to defend the eleven top Communist leaders on trial in New York?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Did you make that donation of $10 to the Communist Party Defense Fund?

A. I again assert the privileges.

Q. I will ask you if it is not a fact that on April 14, 1947, you attended a Communist Party meeting?

A. Will you name the place?

Q. No. Did you know Arnold Johnson?

A. I will have to assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio, to [fol. 143] that question.

Q. Is Arnold Johnson a Communist?

A. Again, I have to assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Ohio Constitution.

Chairman Renner: Doesn't he have the reputation of being a Communist?

The Witness: My answer to that, Mr. Renner, is the same as my previous answer to counsel for the Commission; I must assert my privileges.

By Mr. Isaacs:

Q. As a matter of fact, wasn't Arnold Johnson at that time district organizer for the Communist Party in the state of Ohio?

A. I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Constitution of the State of Ohio.

Q. As a matter of fact, isn't Arnold Johnson presently on trial in New York as a Communist traitor for conspiring to advocate the violent overthrow of the government of the United States?

A. My answer is the same; I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Ohio Constitution.

Q. I ask you if on that date of April 14, 1947, to which [fol. 144] we have just referred, you didn't attend a meet-

ing called by Arnold Johnson to discuss Communist Party organization within the UE, and the importance of the UE to the Communist Party?

A. I assert my privileges under the Fifth Amendment to the Constitution of the United States, and Article 1, Section 10, of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that on this date to which we have just referred, April 14, 1947, you stated that you would need more help from Local 766 of the UE if you were to be free to devote more time to the affairs of the Communist Party?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that on April 28, 1947, you attended a meeting of the Communist Party at which Robert Gunkel presided?

A. I must assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that at that meeting on April 28, 1947, Robert Gunkel gave a report on his attendance at the state executive committee of the Communist Party?

A. How do you spell that name "Gunkel"?

[fol. 145] Q. G-u-n-k-e-l.

Mr. Raley, is this the first time you have ever heard of the name Robert Gunkel?

A. To both of those questions, I will have to assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. You would then be in the unique position of being the only person in Hamilton county that is not familiar with the name of Robert Gunkel as Communist Party organizer in this city for a good many years.

I will ask you if it is not a fact that at that meeting on April 28, to which we have just referred, the receipt of your $10 contribution to the Communist Party Defense Fund was acknowledged?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Ohio Constitution.

Q. I will ask you if on May 3, 1947, you didn't attend a meeting of the Communist Party and report that you had recruited into the Communist Party an employee of the J. H. Day Company?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10, of the Constitution of the State of Ohio.

[fol. 146] Q. I will ask you if it is not a fact that on June 24, 1947, you attended a Communist Party meeting at 217 East 8th Street in Cincinnati, Ohio?

A. What?

Q. 217 East 8th Street, Cincinnati, Ohio.

A. I must assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. Now, do you know what was housed in that building at 217 East 8th Street on that date?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. Now, as a matter of fact, that was the headquarters of Local 766 of the UE at that time; isn't that correct?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Chairman Renner: Mr. Raley, would you explain to the Commission how you could incriminate yourself by acknowledging the location of the headquarters of Local 766 on that date?

The Witness: I don't believe, Mr. Chairman, that I have to give a reason for asserting the privileges of the Constitution, so my answer would be the same to that that [fol. 147] I gave to Mr. Isaacs. I will assert my privileges.

Chairman Renner: I nevertheless request an answer.

The Witness: Just a second while I confer with counsel.

Mr. Berger: I would like to hear the question read.

Chairman Renner: Read the question, please.

(Several questions and answers read by the reporter.)

Mr. Berger: That is what I thought.

(The witness conferred with counsel.)

The Witness: I think I was correct in view of the line of questions that I have to assert my privileges under the Constitution.

Chairman Renner: Counsel will proceed.

By Mr. Isaacs:

Q. I will ask you if it is not a fact that at this meeting of June 24 to which we have just referred, you stated that you had sold three copies of the Communist Party paper and that you would try to sell copies of "The Coming Revolution" at the plant of the—

A. I must plead the privilege of the United States Constitution and the Ohio Constitution.

Q. Is it not a fact that on July 8, 1947, you attended a Communist Party meeting at 217 East 8th Street in Cincinnati, Ohio?

A. I must assert the privilege to that, the privilege under the Fifth Amendment of the United States Con- [fol. 148] stitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Is it not a fact that the discussion at that Communist meeting to which we just referred centered around articles in the June, 1947, "Political Affairs" magazine?

A. I must again assert my privileges under the Fifth Amendment of the United States Constitution and Article 1, Section 10, of the Ohio Constitution.

Q. I will ask you whether or not it is a fact that the magazine, "Political Affairs," is an official magazine of the Communist Party?

A. I must assert my privileges under the Fifth Amendment of the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Isn't it a fact that at this meeting, you led the discussion on Part 1 of an article from "The Communist

Press of Other Lands," and discussed the opening of a second front?

A. I assert my privileges under the Fifth Amendment of the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. I will ask you if it is not a fact that on July 29, 1947, you were elected chairman of the United Electrical branch of the Communist Party?

A. Would you go over the last part of that, please?

Q. On July 29, 1947, you were elected chairman of the [fol. 149] United Electrical branch of the Communist Party in Hamilton county, Ohio?

A. I must assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that on August 19, 1947, you attended a Communist Party meeting at which you presided?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that at that meeting, you reported you had been successful in selling thirty-five copies of the Communist Party paper, "The Great Conspiracy Against the Soviet Union"?

A. I must assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that at that Communist Party meeting to which we have just referred you spoke on the Marshall Plan, and stated that you had prepared yourself by reading the "Worker" and "Political Affairs", both official publications of the Communist Party?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, [fol. 150] Section 10 of the Ohio Constitution.

Q. I will ask you if it is not a fact that on September 3, 1947, you presided at a Communist Party meeting at 217 East 8th Street, Cincinnati, Ohio?

A. I must assert my privileges under the Fifth Amend-

ment to the Constitution of the United States and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Do you know Gus Hall?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. Have you ever heard of Gus Hall?

A. The answer is the same; I assert my privileges under the Fifth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution.

Q. Is he a Communist?

A. The answer is the same. I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. As a matter of fact, you know that Gus Hall was formerly state organizer for the Communist Party in Ohio, has since been convicted as a Communist traitor in New York, and additionally sentenced to a subsequent term for fleeing the jurisdiction of the United States?

[fol. 151] A. To that, I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. You also know that Gus Hall was convicted for conspiring to advocate the violent overthrow of the government of the United States, do you not?

A. I again assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Chairman Renner: How would that incriminate you?

The Witness: Well—

Chairman Renner: I am sure all members of the press know that is so. I don't think they would feel incriminated.

Mr. Berger: Come, come, now, Mr. Chairman; they are not being interrogated by this commission.

Chairman Renner: Is there something peculiar about Mr. Raley's situation that makes him vulnerable in answering the question?

Mr. Berger: Certainly the fact that he is now being questioned by this committee, who is evidently asking him ques-

tions which anybody in this room knows he will not answer because his counsel, which is me, has advised him he doesn't have to answer under the Constitution. I certainly wonder why this committee is pursuing this line of inquiry when they know he will not answer the questions.

[fol. 152] Chairman Renner: Counsel will proceed.

By Mr. Isaacs:

Q. Mr. Raley, I will ask you if it is not a fact that on September 10, 1947, you met with this same Gus Hall at a special Communist Party meeting in Cincinnati, Ohio?

A. I missed the date.

Q. September 10, 1947.

A. Did you mention the alleged address where this was supposed to have—where I was supposed to have met him? My answer to that is the same. I have to assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that this meeting was called by Robert Gunkel expressly on the orders of Gus Hall, who at that time was becoming the new Ohio state chairman of the Communist Party?

A. I again assert my privileges under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that at that conference with Gus Hall on that date, September 10, 1947, you told Gus Hall that you had been a member of the Communist Party since 1940?

A. I again assert my privileges under the Fifth Amend-[fol. 153] ment to the Constitution of the United States and Article 1, Section 10 of the Ohio Constitution.

Q. I will ask you if it is not a fact that at that same conference with Gus Hall, he told you that there was not enough Communist Party recruiting being accomplished within the United Electrical Workers in Cincinnati?

A. The same answer applies, Mr. Counsel. I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. According to the Daily Worker for June 8, 1949, five United Electrical Workers issued statements—five United Electrical leaders; pardon me, issued protests against the jailing of Gus Hall, Henry Winston, and John Gates, and it listed those five protestors as Lem Markland, Herbert Hershberg, Joe Sheetz, John Thomas, and Talmadge Raley. Did you as a UE leader issue a protest against the jailing of these three men?

A. To that question, Mr. Counsel, I have to assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Mr. Corrigan: Mr. Raley, was somebody trying to smear you by putting your name in that notice; that resolution?

The Witness: My answer would be the same as my an- [fol. 154] swer to counsel. I claim privilege.

By Mr. Isaacs:

Q. I already asked you whether or not you know Gus Hall. Do you know Henry Winston?

A. To that, I must plead the privilege of the Fifth Amendment and the Ohio Constitution.

Q. Did you know John Gates?

A. To that, the answer is the same; I plead the privilege.

Q. Now, isn't it a fact that all three—Gus Hall, Henry Winston, and John Gates—were convicted of conspiring to advocate the overthrow of the United States by force and violence?

A. My answer is the same. I assert the privilege of the Fifth Amendment and the Ohio Constitution.

Q. I will ask you if it is not a fact that all three—Gus Hall, Henry Winston, and John Gates—had been active in the Communist Party in the state of Ohio?

A. It seems to me this is just a repetition of the same question in other terminology. My answer is the same. I must assert the privileges under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if you didn't have active association in the affairs of the Communist Party with all three—Gus

Hall, Henry Winston, and John Gates, when they were ac-
[fol. 155] tive in the Communist Party in the state of Ohio?

A. I again assert the privileges under the Fifth Amendment of the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Of the other four names which were included on that petition with yourself was Lem Markland. Do you know Lem Markland?

A. I assert my privileges under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. Do you know Herbert Hirshberg?

A. What are you trying to do, compile a blacklist, or something?

Q. Do you know Herbert Hirshberg?

A. My answer to that is the same as the previous answer. I assert the privileges.

Q. Do you know Joseph Sheetz?

A. My answer is the same; I assert the privilege.

Q. Do you know John Thomas?

A. I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. As a matter of fact, every one of these individuals are leaders of the UE, or were leaders of the UE at that time, were they not, Mr. Raley?

[fol. 156] A. My answer is the same; I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. As a matter of fact, every one of those individuals has been identified as a Communist Party member in sworn testimony, either before this Commission or the Commission of the House of Representatives in Washington; is that not a fact?

A. To that, I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Now, are you a member of the Ohio Labor Conference for Peace?

A. To that, I assert my rights under the—privileges under the Fifth Amendment to the United States Constitu-

tion and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. According to the "Daily Worker" of December 19, 1949, you are listed as one of the sponsors of the Ohio Conference for Peace, an affiliate of the National Labor Conference for Peace; is that correct?

A. What was the date?

Q. The "Daily Worker" for December 19, 1949.

A. Are you asking me whether that appeared in the "Daily Worker"?

[fol. 157] Q. I am asking you if it is not a fact that you were a sponsor of the Ohio Labor Conference for Peace, which is an affiliate of the National Labor Conference for Peace?

A. To that I must assert my privileges.

Q. Do you know who was the national chairman of the National Labor Conference for Peace?

A. My answer is the same; I assert the privilege.

Q. As a matter of fact, it was Marcel Sherer, was it not?

A. It is the same question; I assert the privilege as I did in the previous question.

Q. Do you know Marcel Sherer?

A. The same question again; I assert the privilege of the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Is he a Communist?

A. The same answer; I assert the privilege.

Q. As a matter of fact, Marcel Sherer is a graduate of the International Lenin Institute, and a charter member of the Communist Party in the United States, was he not?

A. The same answer; I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Mr. Raley, I ask you if it is not a fact that during September of 1949, you and other members of your union [fol. 158] attempted to distribute pro-Communist literature kits to the Cincinnati public schools?

A. What was the name of that alleged—

Q. I described them as pro-Communist literature kits.

A. Did you say to the public schools?

Q. To the public schools of Cincinnati.

A. Of Cincinnati. I have to plead the privilege under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution, to that question.

Q. Let me refer to an article carried in the Cincinnati Post on September 13, 1949, captioned, "Schools Trace Communist Propaganda. Union Agent Denies Kits Are Leftist," and refers to an interview with you. Do you recall that interview?

A. I will have to plead the privilege of the Fifth Amendment to the Constitution of the United States, and Article 1, Section 10 of the Ohio Constitution.

Q. Will you say now—

Chairman Renner: Mr. Raley, the Commission would like to have you give an answer to that question. I will ask that the question be repeated. Let the stenotypist repeat the question.

(Question read.)

Chairman Renner: We would like to know whether you [fol. 159] recall that interview. You may say yes or no. Do you recall the interview, or don't you recall it? If you recall it, and we ask you about your recollection, then you are privileged to claim your rights under the Constitution, but it is our opinion—it is my opinion that you have no constitutional right to refuse to answer the question whether or not you recall that interview.

Mr. Berger: Mr. Chairman, you will forgive the witness for taking his legal advice from me, rather than from the committee?

The Witness: If I recall—

Chairman Renner: You may advise your witness what his rights are under the Constitution.

Mr. Berger: I certainly will.

Chairman Renner: I was not aware that you had advised him not to give that answer.

Mr. Berger: I had not. I didn't advise him to give any answer. I pointed out that you were telling the witness what the law is, and with all due respect, that is my function.

If he wants to know the law, I think it is I he should ask, and not you.

Chairman Renner: You may certainly give him your opinion of the law, and I believe I am privileged always to state the opinion of the Commission as to what the law is.

Mr. Berger: Certainly you are, sir.

[fol. 160] The Witness: If I recall correctly, at about three questions previous to this, Mr. Isaacs identified some supposed kits as pro-Communist literature kits distributed to the public schools of Cincinnati. This is a continuation of a series of questions dealing with the same alleged kit, and I believe that the privilege applied in that case, Mr. Chairman.

However, I can consult with counsel to determine whether or not it does.

Chairman Renner: I should like for you to consult with counsel to determine whether in his opinion you are required to answer the question, whether you recollect having had such an interview.

The Witness: I have been advised by counsel that the privilege does apply, if I desire to use it.

Chairman Renner: Counsel may proceed.

By Mr. Isaacs:

Q. You denied at that time, Mr. Raley, of course not under oath, that there was anything in those kits—anything pro-Communist in nature. Are you prepared to place in the record before this commission a similar denial under oath?

A. The same answer goes as to the previous question. I plead the privilege under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

[fol. 161] Q. Mr. Raley, do you know Philip Frankfeld?

A. I must assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. As a matter of fact, Philip Frankfeld was formerly district organizer for the Communist Party in 1951, was he not?

A. The same answer as to the previous question. I assert my privileges.

Q. Philip Frankfeld has now been convicted under the federal laws, for conspiracy to advocate the violent overthrow of the government of the United States, has he not?

A. The same answer; I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. I will ask you if it is not a fact that in the latter part of April, 1951, the time when Philip Frankfeld was Communist Party organizer in the state of Ohio, you held a conference with Philip Frankfeld in the city of Columbus, Ohio?

A. The same answer, Mr. Counsel; I assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Mr. Raley, from time to time, you have signed affidavits required by the Labor-Management Act; that is, the Taft-Hartley Law; affidavits stating that you are not a [fol. 162] member of the Communist Party; is that not correct?

Chairman Renner: Will the witness affirm or deny the question?

The Witness: I would like to talk to counsel on that.

(The witness conferred with counsel.)

The Witness: Yes, on a number of occasions, I signed such affidavits.

By Mr. Isaacs:

Q. Do those affidavits in effect state, "I am not a member of the Communist Party"? Is that not correct?

A. To that, I think I have to plead the privileges of the Fifth Amendment to the Constitution.

Q. In effect, you have said to the government that you are not a member of the Communist Party, and stated that under oath, and from time to time, you have exhibited copies of that affidavit to members of your union and workers, and plants you are trying to organize; is that not correct?

A. Again I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Now, by signing an affidavit—that is, by signing an oath that you are not a member of the Communist Party—you have said to the federal government, "If I am a member of the Communist Party, you can prosecute me for perjury," is that not correct?

[fol. 163] A. In view of your line of questions, Mr. Counsel, I think I have to assert the privilege to that question.

Q. Mr. Raley, will you make that same offer to the State of Ohio by stating here and now under oath before this commission that you are not now and have never been a member of the Communist Party?

A. Are you asking me a question?

Q. Right.

A. I again assert the privilege under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. In other words, having signed an affidavit before the Taft-Hartley Law which might subject you to prosecution under the federal law, you will not make the same statement to this commission under oath that you are not now, and have never been a member of the Communist Party?

A. I assert the privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. I ask you if it is not a fact that you are now an active member of the Communist Party in Cincinnati, Ohio?

A. To that, I assert the privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Mr. Isaacs: No further questions.

[fol. 164] Chairman Renner: Do any members of the Commission have questions?

Mr. Corrigan.

By Mr. Corrigan:

Q. Mr. Raley, I wonder—

A. Pardon me; what is the question?

Q. Corrigan, C-o-r-r-i-g-a-n.

Chairman Renner: Corrigan; a little German boy from Cleveland.

By Mr. Corrigan:

Q. I wonder if you are familiar with, or happen to know, Jerome Joseph?

A. To that, sir, I would have to assert the privilege.

Q. Victor Pasche; do you know him?

A. My answer would be the same; I refuse to answer on the basis of the Fifth Amendment and the Ohio Constitution.

Q. Do you happen to know Herbert Siens?

A. To that, I assert the privilege.

Q. Do you happen to know Marie Reed Haug?

A. I assert the privilege there, the Fifth Amendment, and Article 1, Section 10 of the Ohio Constitution.

Q. Do you happen to know Paul Shepherd?

A. The answer is the same; I assert the privilege.

Q. Isn't it a fact that the people I have just listed are all prominent in the leadership of the UE in Cleveland, Ohio?

[fol. 165] A. My answer to that would be the same; I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Do you know Mr. Gordon Renner?

Chairman Renner: You may consult counsel if you wish, Mr. Raley.

The Witness: I am wondering what trick the Commission member is trying to lead me into.

By Mr. Corrigan:

Q. I merely asked if you knew Mr. Gordon Renner.

(The witness conferred with counsel.)

A. What is your definition of "know"?

Q. Of all the people in this room, if I asked you if you would pick Gordon Renner out of this crowd, who would you point to? Are you familiar with the name; are you familiar with the face; are you familiar with the job?

A. Well, I think to that, to be able to point him out, I think I could do that, yes.

Q. Tell me this, then; is he in the room?

A. I assume the chairman of this commission is Mr. Renner.

Q. Let me ask you another question, then. Maybe you are a little more familiar with this. Do you happen to know Mr. Sydney Berger?

A. Pardon?

[fol. 166] Q. Do you happen to know Mr. Sydney Berger?

A. Would you identify Mr. Sydney Berger?

Q. I think he previously identified himself as being an attorney from Evansville, Indiana. I believe he is seated immediately to your left.

A. That Mr. Sydney Berger? Yes, I know him.

Q. Now, to my questions about the identity of Mr. Gordon Renner and Mr. Sydney Berger, you answered both of those questions. To my questions about Jerome Joseph, Victor Pasche, Marie Reed Haug, and Paul Shepherd, you refused to answer. You relied on your constitutional ground. Now, is there something connected with those lists of names from the Cleveland area that I mentioned that if I identified—that if you admitted knowing them, you would be subjecting yourself to some crime under the laws of this state and this nation?

A. My answer would be the same as it was to the original question; I would assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Ohio Constitution.

Q. In your opinion, then, Mr. Raley, you feel that you could be prosecuted for a crime if you admitted knowing these listed names in the Cleveland area that I have previously stated?

A. Are you making a statement or asking a question?

Q. I am asking a question. Do you feel you could be [fol. 167] prosecuted for a crime if you admitted knowing them?

A. You are making that a question rather than a statement?

Q. Yes.

A. I assert my privileges under the Fifth Amendment and the Ohio Constitution.

Q. We have received a statement called "Statement of Talmadge Raley." I don't know whether you are familiar

with it. It is a mimeographed copy consisting of eight mimeographed pages.

A. I have a statement which I would like for the chairman to give me the privilege of reading at the conclusion of these hearings.

Q. Are you familiar with that statement, this mimeographed statement here? Do you want to look it over?

A. That is a copy of a statement which I would like to read for the record at the conclusion of this hearing.

Q. While you still have it in your hand, you are admitting under that statement that you issued—

A. That is true.

Q. There is a signature that appears on the back. Is that your signature at the bottom, mimeographed copy, of course; is that a reproduction of your signature?

A. I believe, Mr. Chairman, I am within my rights in pleading the privilege and refusal to answer or identify my signature in these hearings.

[fol. 168] Q. Previously, Mr. Raley, you told us that you resided at Sharonville, Ohio, Route 1. There is a different address on this statement. I just wonder what address that is. Do you have a Cincinnati address?

A. The address appearing on the statement which I would like to read to this commission at the conclusion of these hearings is the address of the local union office.

Q. What union is that you are referring to?

A. Local 766 of the United Electrical, Radio and Machine Workers of America.

Q. In what capacity did you serve in that union?

A. Pardon?

Q. What is your capacity, or office?

A. I am a field organizer for the union.

Chairman Renner: Local 766?

The Witness: For the union.

Chairman Renner: What union?

The Witness: United Electrical Workers. I have my office—

Chairman Renner: At what level? The international level, the state level, or the local level? You say you are a field organizer; at what level? The local level—Local 766?

Or District 7, or the international union, if it is still an international union?

The Witness: Not being used to those terms, I don't [fol. 169] know just what you are trying to get at. I am a field organizer for the international union assigned to the Cincinnati area, which, I think, I answered earlier.

Chairman Renner: I am sorry.

By Mr. Corrigan:

Q. Your area doesn't extend as far as Cleveland, does it, Mr. Raley?

A. I think, Mr. Corrigan—?

Q. That is right.

A. Mr. Corrigan, that the definition of "area" is a rather broad thing. If I was assigned to the Cleveland area by the international union, that is where I would work. Currently, I am assigned to the Cincinnati area, and that is where my work is.

Q. That is what I was trying to get at. There is a Cleveland area. That area is not under your control now, is that right? There is a Cleveland area, a district called the Cleveland area; is that right?

A. We have an organization in Cleveland, yes.

Q. Who has a similar—holds your position in the Cleveland area at the present time, with the union?

A. I think under that, Mr. Corrigan, I would have to assert my privileges under the Fifth Amendment and the Ohio Constitution, and refuse to answer.

Q. You mean you think you could be guilty of a crime if [fol. 170] you revealed to this commission the name of the party serving in a similar capacity in the Cleveland area that you serve in the Cincinnati district?

A. Well, my answer to that question would be the same. I would assert the privilege.

Mr. Blackburn: I have a question.

Chairman Renner: Mr. Blackburn.

By Mr. Blackburn:

Q. Mr. Raley—

A. Pardon me—

Chairman Renner: Senator Blackburn.

By Mr. Blackburn:

Q. If you were a dues-paying member and found your leaders were Communists, would you condemn them or condone them?

A. My answer to that, Senator, would be to plead the privilege under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. One other question. Do you believe that the Soviet Union has as one of its chief objections the overthrow of this government?

A. I didn't know that I was here to discuss foreign policy of anything, so to that, I would have to plead the privilege of the Fifth Amendment and the Ohio Constitution.

Q. Do you believe the Bill of Rights would be preserved if the Communist Party were successful in their objectives in this country?

[fol. 171] A. My answer to that would be the same, I assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Chairman Renner: Are there any further questions?

Mr. Devine: I have a question.

Chairman Renner: Mr. Devine.

By Mr. Devine:

Q. My name is Devine, D-e-v-i-n-e, from Columbus, Ohio.

A. Senator or representative?

Q. Representative from Franklin county. Mr. Raley, have you had occasion to examine the October 18, 1952, issue of the Saturday Evening Post in which an article appears relative to the activities of the UE particularly, particularly in the Pennsylvania and Schenectady area?

A. I have not read it—that was the October issue?

Q. October, 1952; last Saturday.

A. Thank you for reminding me. I will get it. I have not read it.

Q. You have not had occasion to read it or comment on its accuracy?

A. I have not seen it.

Mr. Devine: No further questions.

Chairman Renner: Mr. Schneider.

[fol. 172] By Mr. Schneider:

Q. Mr. Raley, the name is Schneider, S-c-h-n-e-i-d-e-r. On May 4, 1948, did you or did you not attend a meeting at 217 East 8th Street in the city of Cincinnati at which one or more of the following were present: Esther Tice, Gus Hall, Forrest Payne, Robert Gunkel, Philip Parr, Eddie Biderman, or others?

A. I thought I had already answered that question, Senator. To that, I assert the privilege of the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. Well, at such a meeting, or at any time, did you ever make the following statement: "In the event of war, I will personally see that no machine tool plant works under my jurisdiction"?

A. May I confer with counsel for just a second?

(The witness conferred with counsel.)

A. In asking the question, Mr. Schneider, just what is the purpose for the question?

Q. Did you or did you not at any time make that statement?

A. You are inferring something in your statement which I don't like, and don't think is correct. I want to say that the statement which I would like to present to this committee, if I am permitted to do so, at the conclusion of these hearings, will point out my loyalty to my country, [fol. 173] and that I have served almost two years in the last war voluntarily, not having to go. I have a son at the present time in the war, so I think the question of my loyalty has spoken for itself, but to the question itself, I think I will have to, in view of the nature of these hearings, assert the privileges under the Fifth Amendment

to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. That is the ground for your refusal to answer that question?

A. That is correct.

Q. Then, one last question, Mr. Raley. Have you ever publicly advocated the alteration or overthrow of the government of the state of Ohio or United States of America; either one, by coercion or threat of bodily harm, force or violence, or revolution, or any one of those?

A. Again, I would have to say that I think my public record of service to my country speaks for itself, but to that question, I would have to plead the privilege and refuse to answer.

Mr. Schneider: That is all, Mr. Chairman.

Chairman Renner: Mr. Corrigan.

By Mr. Corrigan:

Q. In the event of a shooting war with Russia, would you defend the United States, Mr. Raley?

A. Well, that is—my answer to that is somewhat in the nature of the answer I have given to Mr. Schneider. I have [fol. 174] served my country. I have a son presently serving my country, and if my country ever needs my service, I will be there to serve it.

Q. Even in the event of a shooting war with Russia?

A. With any one.

Q. Including Russia?

A. With any one, including it, yes; with any one.

Chairman Renner: Is there any further question?

By Chairman Renner:

Q. Mr. Raley, you were earlier asked a question whether you know Marjorie Gruss, G-r-u-s-s. I refer to the record of the House Un-American Activities Committee of July, 1950, and point to Page 2774, where you were asked by Mr. Tavenner: "Who was your secretary while you were in that position the second time, after you came back from the service?"

You replied, "Well, I had a secretary by the name of Virginia Hamlin, who is presently employed in that position."

Mr. Tavenner then asked you, "Did you have others?"

You replied, "Yes, there was a short period of time, I don't recall exactly the time, and I don't remember how long; there was a girl employed in the local union by the name of Marjorie Gruss."

On Page 2776 of the same record, Mr. Velde asked the question, "Who was the other secretary in your office who you said is there presently?"

[fol. 175] You replied, "A girl by the name of Virginia Hamlin."

Mr. Velde said, "Are you acquainted with Virginia Hamlin and Marjorie Gruss?"

And you replied, "I think it is rather obvious, since they worked for me at that time."

Inasmuch as you did not hesitate to answer the question at the time of that hearing, why do you now resort to the protection of the Federal Constitution and the Ohio Constitution to refrain from answering whether or not you know Marjorie Gruss?

A. Well, in answer to that question, the only answer I can give you is to again assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. And you refuse to answer the question?

A. That is my privilege under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Ohio Constitution. I refuse to answer.

Q. You refuse to answer the question?

A. Yes.

Q. We have referred earlier to a mimeographed statement entitled, "Statement of Talmadge Raley, Appearing Before the Ohio Un-American Activities Commission, 10-20-52," and on the last page of the statement appears a facsimile of the signature, "T. Raley," and under that is signed, "Talmadge Raley, 1030 Vine Street, Cincinnati, [fol. 176] Ohio."

You have stated that you wish to make a statement to this commission. I will show you this statement and ask you if it is the same statement that you wish to make to this commission?

A. Mr. Chairman, that is the statement that I would like to read to this commission for the record.

Q. All right; may I have the statement, please?

A. Or if the chairman would like to read it, it would be just as acceptable to me.

Q. On Page 4 of the statement referred to, there is the language, under the heading "Commission, Illegal," you have this, "A court case, testing the legality of this commission, is now before the courts of Ohio."

Will you tell us what is the basis for that statement?

A. Well, in preparing the statement which I wanted to present to this commission; I didn't have the advice of a legal mind. I was under the impression that, growing out of some previous hearings by this commission, that a brief, or whatever you legal minds call it, was presented similar to what Mr. Berger presented here this morning, and I was further under the impression that steps had been taken which had brought this case before the courts of Ohio. That was my impression; I might have been incorrect, but that was my impression.

Q. Now, in order to clarify the impression that you had, I will ask you whether you know of any court case now [fol. 177] pending testing the legality of this commission, and I will suggest that you consult with your counsel before you give the answer.

Mr. Berger: I have nothing to confer with him about. He can answer that question.

A. The only thing I can say, Mr. Chairman, is what I have said before, that in view of the fact that certain what I thought was litigation, or whatever you call it, had been instituted, but I thought the normal course of things was that it automatically went on into the courts, and that is where I thought it was.

I don't know accurately if that is what you are trying to get at.

Q. You don't know at all of any case pending in Ohio testing the legality of this commission, do you?

A. I assume that is where the case was.

Q. I am asking you whether you know.

A. Whether I actually know whether the case is actually before the courts as yet, I don't.

Q. And yet, you did not hesitate to state in a statement which you had mimeographed and, therefore, prepared for distribution, "A court case, testing the legality of this commission, is now before the courts of Ohio."

A. Maybe my definition or understanding of legal procedure, probably isn't what it should be, but I was under the impression that the proceedings instituted by our gen-
[fol. 178]. eral counsel before an earlier hearing was the same as instituting proceedings before court.

Q. May I ask you if you have told members of your union that a court case testing the legality of this commission is now before the courts of Ohio?

A. I think I have told our members that the question of the legality of this commission was being tested by our union. Whether I said it was now before the courts or not, I don't know.

Q. Is the question of the legality of this commission being tested by your union?

A. In my opinion, it was, Mr. Chairman; yes, it is.

Q. Where?

A. As I said, I am not the legal representative of our union so I don't keep track of legal cases instituted by our union, so I don't know where they are, if they exist. On the basis of what I knew of what had been started, these things that Mr. Berger presented to the counsel this morning.

As I said, in my opinion, they constituted the legal initial steps towards the testing of the legality of this commission.

Q. Then, you took it upon yourself to communicate to members of your union the legal status of a legal action without consulting the counsel for your union?

A. Counsel for our union was in New York. I was in Cincinnati.

[fol. 179] Q. You still have the mails?

A. But I still believe—let me ask my counsel something.

(The witness conferred with counsel.)

Mr. Berger: May I see that, Mr. Counsel?

The Witness: Again, I didn't check with counsel, as I said before, but in my interpretation, or my belief, the way these things came about, and the way they proceeded, in my opinion, the legal question had been raised, and it was—it is in its normal channels, whatever those channels might be, to get before the proper officials in the state of Ohio to be determined by the proper officials in the state of Ohio.

By Chairman Renner:

Q. Is it now clear to you that there is no court case before the courts of Ohio testing the legality of this commission?

A. No, it is not clear. You have told me that there isn't, or I think you told me that there isn't, but before I would accept that, I would have to check with our counsel to determine whether or not he has initiated the steps of which you might not be aware, you know, to bring it before the court.

Q. Who is your counsel?

A. National counsel is David Scribner in New York.

Q. May I advise you that David Scribner called this matter to the attention of the Commission in a brief more than six months ago, and as yet, no member of the Commission has learned that he has taken the first step to question in [fol. 180] the courts the legality of this commission, and I would hope that you would communicate with your counsel, Mr. David Scribner, so that he will affirm or deny the statement that I have made.

A. Well, I know that the courts move rather slow in a number of things.

Q. I think Mr. Scribner is moving rather slow.

A. That it was in the process, and a legal step had been taken?

Q. Mr. Raley, on Page 6 of this statement, in the second sentence of the fourth paragraph—last sentence, you say, in connection with your war record during World War II, "I was also a member of the Labor Advisory Committee

to the War Production Board for the machine tool industry."

I ask the question if you say at the time you were a member of the Advisory Commission—Labor Advisory Committee to the War Production Board for the machine tool industry. Were you or were you not a member of the Communist Party at that time?

A. To that, I assert the privilege under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. In this statement, you have gone into some detail about your war record. You state that you had been classified as fit only for limited service, and rejected by the draft board.

"Despite this, I felt that I was not making my major [fol. 181] contribution to the war effort, so I signed voluntary induction papers in an effort to get into the thick of things. I spent almost two years in the U.S. Army Air Forces as a radio operator mechanic. I was honorably discharged in November of 1945, and immediately returned to my work with the union."

Obviously, you were proud of your contribution to the war effort in 1941 to 1945.

In 1950, before the House Un-American Activities Committee, you were asked the question by counsel for the Committee, "Did you support the Communist forces in Korea in their actions against the United States at the present time?"

Your reply was, "I don't think this is the place for a discussion on foreign affairs. I decline to answer that on the same ground on which I declined to answer the other questions."

I will now ask the question asked by counsel at that time, "Do you support the Communist forces in Korea in their actions against the United States at the present time?"

A. I don't follow you. Were you reading direct from that or—

Q. I was reading from the record.

A. Were you in addition to that asking a question?

Q. Yes, I am asking you the question: Do you support

the Communist forces in Korea in their actions against the United States at the present time, 1952?

A. My answer there would be the same, that I didn't think we were here to discuss the question of foreign affairs.

[fol. 182] Q. We are not discussing foreign affairs; we are discussing Talmadge Raley.

A. On that basis, and the nature of the question, I again assert my privileges under the Fifth Amendment to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. And you refuse to answer the question?

A. That is correct.

Q. I think I will ask you this question: As a labor organizer for the UE, what is your purpose and intention with regard to hastening the war effort for this country in defense projects in the event it becomes further involved in war?

A. Will you go over that again kind of slow, so I can get it?

Q. You have heard this question before, Mr. Raley.

A. Not in exactly that context.

Q. As a labor organizer for the UE, what is your purpose and intention with regard to hastening the war effort for this country in defense projects in the event it becomes even further involved in war?

A. I am trying to recall in going through it just what your question—

Q. I would like to bring the record up to date. I would like to know whether you have changed your mind since then.

A. Changed my mind since when?

[fol. 183] Q. Since you gave an answer to that question, and I will read the answer to the question that you gave two years ago. Your answer was, "That, I think, is along the same line as the question you asked before, and I decline to answer it on the same ground."

A. I think it is the same type of a question, and I think my record of service to my country speaks for itself, and I answer that in the same manner that I did before. I as-

sert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.

Q. I shall ask you one more question, Mr. Raley.

A. I don't think this committee is within its bounds when it tries to pry into my thoughts. I think you are going way beyond your privilege when you try to see what I think, because I believe what is inside my head belongs to me, you know.

Q. Mr. Raley, we are not attempting to pry into your thoughts. We simply want to know whether your intentions as a responsible labor leader in Cincinnati constitute a menace to the war effort in this area. Do you refuse to answer the question on the ground that it might tend to incriminate you?

A. I asserted my privileges under the Fifth Amendment to the Constitution and Article 1, Section of the Ohio Constitution.

Q. Now, I should like to point out that the war service [fol. 184] which you gave during World War II, and of which you were so proud, was given at a time when Communist Russia was an ally of this country. The service in Korea, the active shooting war in Korea, is now occurring at a time when Communist Russia is hostile to this country. Is there any likelihood that that different situation accounts for your different attitude toward assisting in the war effort as between World War II and the Korean situation at the present time?

A. I think the question is the same kind of a question that you asked before, only framed in a different manner, and again I must insist that my record speaks for itself in the defense of my country, and the people, and the standard of living of the workers of this country which, I think, is to the best interest of this country, but to your question itself, I have to assert the privileges under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Q. If this country needed war production in order to prosecute the expansion of the war in Asia, and if you were in a position to increase that production, don't you think that the people of this community would feel much happier to

have you say you would, instead of hiding behind your constitutional privilege?

A. As a very famous politician said before me, that is a very "iffy" question. Again, I think you are trying to pry [fol. 185] into my mind, which I don't think is the purpose, or shouldn't be the purpose of this committee or anybody else.

Q. As the public has said before, that is a very evasive answer.

A. And I think I have to assert my privileges under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.

Mr. Berger: May I remind the Chairman that Mr. Corrigan asked a similar question, and there was no evasion on the part of this witness.

Chairman Renner: It was a similar question, but I should like for the witness to answer the question that I have asked. I have requested an answer, and he has refused to answer.

Mr. Berger: I think he is legitimately afraid of the type of legal playing around that has been done.

Chairman Renner: Mr. Berger, if you wish to make a statement, the Commission will be happy to have you sworn in as a witness. Otherwise, your function here relates to advising your client.

Are there any other questions?

Mr. Headley: I would like to ask a question.

By Mr. Headley:

Q. Both you and the previous witness—

A. What is that name?

[fol. 186] Q. My name is Headley, H-e-a-d-l-e-y. Both you and the previous witness made reference to the alleviation of conditions of workers in this country. I should like to have your opinion as to the working conditions and general conditions of what are sometimes referred to as the labor class, as compared to that in Russia.

A. I only know conditions of the working class in America. I know that they are poor.

Q. They are poor?

A. In relationship to what they should be. I know they can't get wage increases because of wage freezes by politicians. I know that the cost of living is terrifically high. I know that they are bound down by taxes, and a number of things, which I do not agree with. I am striving to the best of my ability and my capacity as a representative of your union to improve those conditions, and I will continue to do so.

Q. How do those conditions to which you have just referred compare to the conditions of the worker in Russia?

A. Never having been in Russia, sir, I don't know what conditions are.

Q. How do those conditions, as you refer to them, compare to the conditions of the workers in England?

A. Again, never having been in England, I can't compare the conditions.

[fol. 187] Q. And also the conditions of workers in France?

A. The same thing. I was never in France. I can't compare the conditions. I can only compare the conditions with which—with what I know exists in America, and what America is capable of doing for the workers of this country.

Q. And with those conditions, you are dissatisfied?

A. Yes; I would like to see wages much higher. I would like to see older people get better benefits when they retire. I would like to have many things improved, and to the best of my ability as an organizer for my union, I strive to accomplish that.

Chairman Renner: Are there any further questions by members of the Commission?

Mr. Robinson.

By Mr. Robinson:

Q. The name is Kenneth Robinson; I am a member of the House from Marion, Ohio.

I didn't think you would find that was necessary. I wonder if you still subscribe to a statement here, "Most of the members of this commission have similar anti-union and anti-people's records within the state legislature."

Are you familiar at all with anybody's record in the state legislature who is serving on this commission?

A. I have made it my business at various times on certain issues to keep myself informed on the voting record.

[fol. 188] Q. Are you informed as to any particular individual who is serving on this commission as to his record?

A. I know the record of some of the members of this commission, but I don't think that this is the place—

Q. Just which ones were you referring to, when you made that statement in this document which I take it you handed to the membership in your union?

A. To some of the members.

Q. Which ones?

A. Primarily to the chairman.

Q. But this statement does not apply at all; you refer to the chairman particularly.

A. Certainly from this area, I have certainly tried to keep myself informed on his record.

Q. I notice you didn't know Senator Headley from this district.

A. There are a great number of politicians that I don't know.

Chairman Renner: There are a lot of labor people and UE people that you don't know, Mr. Raley.

By Mr. Robinson:

Q. This is another unfounded statement; you have no information to back it up at all.

A. If you want to set a time and place, I will make it my business to make a careful research job on the record [fol. 189] of the Commission.

Q. You did not do that before preparing this statement?

A. And sit down with you and go over that record, if you wish to do so.

Q. You did not make that research prior to the preparation of this statement?

A. I have enough general knowledge as to the position of certain members of the Commission on certain issues that I think I was justified in making that statement.

Q. You are acquainted with Senator Carney, are you, of this commission?

A. I have heard of the gentleman.

Q. What county am I from?

A. I don't know what county you are from.

Q. In other words, you don't have any information at all concerning the members?

A. When the chairman told your name, I think he said Marion county. I am not sure.

Mr. Robinson: That is all.

The Witness: If you want me to compile the record for you—

Mr. Robinson: I will be pleased to have you do so. You might change your statement.

The Witness: I am not saying each individual member of this commission; some of you might have good records. [fol. 190] Mr. Robinson: This leaves the impression that the Commission is stacked against you.

The Witness: On issues that I think are important to the workers of this country, if you have such a record, I would be happy to apologize.

Chairman Renner: You didn't intend to smear the Commission, did you?

The Witness: No, I just intended to state a fact.

By Mr. Corrigan:

Q. Will you make it a point to study the record of John Corrigan, of Cuyahoga county? I think this is a direct smear.

A. I think I can check your record, Mr. Corrigan.

Chairman Renner: Are there any further questions by members of the Commission? If not, the witness will be excused.

The Witness: Do you want me to read the statement?

Chairman Renner: I beg your pardon, Mr. Raley. The Commission members have, I believe, seen this statement. However, we should be very happy if you would submit your copy of the statement so that we know we have a correct and official copy of the statement which will be received for the record of the Commission.

The Witness: Submit it, or read it?

Mr. Robinson: I would like to have him read this under oath into the record.

[fol. 191] Chairman Renner: Does the witness care to place an affidavit at the bottom of his statement to the Commission, and state that all the facts contained therein are true to the best of his knowledge and belief?

The Witness: Let me ask if the members of the Commission have ever requested that of any previous witness?

Chairman Renner: No previous witnesses; they have been entirely willing to leave their statements with the Commission so that it might be incorporated in the record.

Mr. Robinson: I might say, Mr. Chairman, this is one of the most vicious statements I have ever seen submitted to this commission.

The Witness: Well, to my knowledge, it was a true statement; it was how I felt on the issue that I raised in the statement. It is my personal feelings.

I suspect, not knowing definitely, I suspect in relationship to the legal question that Mr. Renner raised previously to the question of a very fine-cut definition of what legal action constitutes in relationship to the processing of this case before the courts and the state of Ohio, that he is trying to use the question of the affidavit to block me from reading the statement. I wouldn't do that, because I am fearful of what you might try to do to me, you know, because maybe, not being a lawyer, I might have made a slight legal error; I don't know.

[fol. 192] Chairman Renner: Mr. Raley, this commission can do nothing. It is a legislative commission.

The Witness: It can be very influential in seeing that things happen.

Chairman Renner: Then, you are perfectly willing to see that this statement gets wide distribution, notwithstanding you are unwilling to stand behind the truth of the things that are contained in the statement?

The Witness: I said to the best of my knowledge, the statement is true.

Chairman Renner: Would you make affidavit—

The Witness: Now, you are trying to pin it down and have raised something here which, frankly, I don't know the legal fine points of. I would have to—

Chairman Renner: You may consult counsel.

The Witness: I would have to consult with counsel on it, because I don't know what you are trying to do. I suspect, but I don't know.

Chairman Renner: You may consult counsel.

Mr. Robinson: We are trying to find out if they are your truthful statements in your statement.

The Witness: I said to the best of my knowledge, they are.

(The witness conferred with counsel.)

The Witness: On the advice of counsel, and in view of [fol. 193] what I fear the Commission might be trying to do, I would not insist on reading it under the conditions imposed by the Commission. I would submit it to the Commission with the understanding that it becomes a part of the record.

Chairman Renner: That privilege has been granted to all witnesses who desire to make a written statement.

Mr. Robinson: Mr. Raley, the ones you have handed out to the membership of the union, did you cross off your signature on them?

The Witness: I did not.

Chairman Renner: In other words, this is not a true copy of the one you have given wide distribution to?

The Witness: This is a true copy, with the exception I have crossed off my signature in view of the things raised by the chairman of this commission who has indicated that he would like to use it in some legal way to jeopardize me, and I don't know just how.

As I said, I am not a legal mind; I don't know just how he would do it. I want to try to protect myself.

Mr. Robinson: You will also admit a number of facts you state in there are not true?

The Witness: To the best of my knowledge, the facts stated therein are true. A great number of them are documented statements.

Chairman Renner: Notwithstanding the crossing out of [fol. 194] your signature, the Commission can still assume that it is the statement of Talmadge Raley?

The Witness: It is a statement that I wish to leave with the Commission.

Mr. Headley: It is your statement?

The Witness: Excuse me just a minute.

(The witness conferred with counsel.)

The Witness: Yes; that is my statement for the record. I want it introduced.

Chairman Renner: You are not trying to trick the Commission by erasing the signature at the bottom, are you, Mr. Raley?

The Witness: I am perfectly—

Mr. Berger: Well, he has a right to do that, Mr. Chairman.

Chairman Renner: The statement will be received for the record.

"1st Amendment, U. S. Constitution. 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peacably to assemble and to petition the government for a redress of grievances.'

"5th Amendment, U. S. Constitution. 'No person shall be held to answer for a capital or otherwise infamous [fol. 195] crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jepordy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.'

"What is 'Americanism'?

"To me the true test of 'Americanism' or 'patriotism', is the degree to which any person is willing to fight to protect and preserve the rights guaranteed by our Constitution, and to defend this Constitution and our free and democratic institutions, which flow from it, from those who would defile and destroy our Constitution an all that America means to us; and the degree to which a person contributes to improving the welbeing of the workers, for the workers, the ordinary people are America.

"Un-American Committees.

"The un-American Committees, including the Ohio Commission, set up by the various states, are patterned after the House Un-American Activities Committee of Washington, D. C. Therefore, in order to better understand the purpose and designs of these various Committees its is [fol. 196] necessary that we first examine the parent Committee; seeing how they violate our Constitution and all concepts of true Americanism.

"Who are they?

"At various times this Committee has been chaired by Martin Dies of Texas; John Rankin of Mississippi; J. Parnell Thomas of New Jersey and John S. Wood of Georgia.

"With the exception of J. Parnell Thomas, (who was sent to jail for stealing money from the tax-payers, kickbacks) the chairmen of this Committee have been Southern Dixiecrats. A majority of the citizens of their states are not even allowed to vote due to the un-American, un-Democratic poll tax which they support. Their records as Congressmen has been one to bring shame to the American people. Almost without exception they have voted for the Taft-Hartley and all other anti-labor legislation; against Fair Employment Legislation; against Federal anti-Lynch Laws; against all efforts to stop filibusters which prevents Congress from even voting on bills; against efforts to raise the standard of living for all Americans such as higher minimum wages, increased old age pensions, Federal Low Cost Housing, price controls, etc.

"What do they really stand for?

"What these people stand for—what they represent—is best expressed in their own words of which the following are only a few: 'After all, the Klan is an American Institution, its members are Americans. Our job is to in- [fol. 197] vestigate foreign 'isms and alien organizations.' (John Rankin—quoted by Drew Pierson, June 11, 1946). 'The threats and intimidations of the Ku Klux Klan are an old American custom—just like illegal whiskey making.' (John S. Wood, June 17, 1946.)

"March 29, 1943, John Rankin, openely defending a man indicted for sedition, said: 'Ask yourself if the White Gentiles of this country have no rights left that the Department of Justice is bound to respect.'

"May 26, 1944, John Rankin had this to say about the President's Fair Employment Practices Committee: 'This is the beginning of a Communist dictatorship the like of which America never dreamed.'

"What these characters think of American workers is reflected in the following: 'Resolved, that any law or parts of laws setting a limitation on the number of hours a person may work, be repealed, and that there shall be no additional pay for overtime work or for work on legal holidays.' (Congressional Record, March 27, 1942; by John Rankin).

"As Chairman of the House Committee on Veteran's Legislation, Congressman Rankin favored laws to make returning service men strike-breakers. On October 2, 1945, speaking of a bill before Congress, Rankin said: 'If Congress will pass this bill, and see that our young men who are no longer needed in the service are discharged immediately, every strike will be broken overnight.'

[fol. 198] "Not so strange bed-fellows.

"Considering the background and public record of these un-American characters who used witch-hunting to hide their sell-out of the people, it is not strange that they attracted the support of the real enemies of America. A quick look at some of the real un-Americans who were in support of the work of such Committees is revealing.

"At various times, either in their official publications, or in public speeches, the following have expressed sympathy with, and support for this Committee and its Chairmen:

"James A. Colescott: Imperial Grand Wizard of the KKK.

"Gerald W. Winrod: publisher of the Defender and indicted for sedition during World War II.

"Court Asher: Publisher of the Ex-Ray and indicted for sedition during World War II.

"C. Leon de Aryan: Publisher of The Broom, dishonorably discharged from Army in World War I, twice indicted for sedition during World War II.

"Eugene D. Fliterafft: Publisher of the Gentile News.

"Nazi Der Deutscher Kekruf Und Beobachter: until suppressed during World War II.

"William Dudley Pelley: publisher of the New Liberator, sentenced to 15 years for criminal sedition during World War II.

"George Sylvester Viereck: convicted Nazi Agent.

"Gerald L. K. Smith:

[fol. 199] "This Committee and its work was supported by almost every pro-Nazi element in America. It has also been supported by spokesmen for the U.S. Chamber of Commerce, the National Association of Manufacturers and other Big Business groups.

"A fine group of 'Americans' (members of this Committee) who have assumed the power of setting 'standards' of 'Americanism' whereby all others are to be judged—either measure up to these standards and agree with all of the things they stand for or be classified as 'subversive.

"The Ohio Un-American Commission.

"This copy of the House Committee was created by the 99th General Assembly in 1951 and placed under the Chairmanship of Gordon Renner, Republican of Cincinnati. Renner's record in the General Assembly fits him admirably for this job. On a state scale, his record is comparable to that of Dies, Rankin and Wood on a National scale. He is an ardent follower and supporter of Robert A. Taft, father of the infamous anti-labor Taft-Hartley Act. He was a bitter opponent of FEPC; against legislation favoring the working people of Ohio. It was Renner, speaking for the industrial lobby, who successfully opposed a bill to stop factories and mills from dumping their filth into public streams. As a result we still have water that isn't fit to drink. Most other members of this Commission have similar anti-union and anti-peoples records in the state Legislature.

[fol. 200] "Commission Illegal.

"This Commission was created by the 99th General Assembly, which has since adjourned. Under Ohio law the General Assembly cannot legally set up a Committee to function after its adjournment.

"The Supreme Court of the State of Ohio, and official opinions from the Attorney General of Ohio, have declared that commissions which were created under similar conditions are improper and illegal and are without any

legal legislative purpose and such designation and activities are in violation of the Ohio Constitution.

"A court case, testing the legality of this Commission, is now before the courts of Ohio. Despite these facts this Commission still continues to function illegally, and to illegally spend the tax payers money.

"Purpose of Commission.

"The purpose of this Commission is to further the work started by the parent group—to create a situation where no person will dare to raise their voice in opposition to the Big Business program of War; High Profits; Frozen Wages; Rising Prices; High Taxes; No Civil Liberties; No Housing—to rule American by fear rather than reason; to detroy the labor movement, the largest organized group that stands in the way of such a program—to create a condition where honest citizens must become human robots who can only answer 'Ja' 'Ja' to this program of [fol. 201] Big Business, thus destroying our Constitution.

"Following in the footsteps of similar committees they have, and will continue to, parade scores of criminals, paid labor spies, stool-pigeons, forgers, inmates of insane asylums and other types of gutter filth before the public to 'testify' to the character and patriotism of honest citizens. It is the 'testimony' of such characters which will be used to 'prove' persons to be 'subversive'.

"Persons called before this Commission are not allowed to cross-examine, or in any other way challenge, the 'testimony' of such 'witnesses'. The pages of Labor History are full of cases where such paid informers have been used to frame the leadership in order to destroy the union.

"These hearings are also used by the politicians to distract the attention of the voters from their sorid, do-nothing, record, and to get cheap newspaper publicity in the hope it will buy them a few more votes.

"Who is Talmadge Raley?

"I was born March 2, 1911, on a small farm in Kentucky. I moved to Cincinnati in the spring of 1921; where I went to school, worked, married, raised my family and have lived every since.

"I have two children and three grandchildren, all born in Cincinnati. My son is now serving in the U. S. Army Air [fol. 202] Forces.

"For 15 years I worked in a number of different shops in. Cincinnati. As a result of this experience in such industries as chemical, porcelain, wood, plastics, etc., I encountered all of the evils met by the ordinary worker; low wages; long hours; speed-up under a variety of incentive systems, poor working conditions; lack of security, and decided that at the first opportunity I would do something about it.

"My first opportunity came in the mid '30s, the days of NRA (the Blue Eagle days) when I helped to organize the shop where I worked. The boss refused to even meet with the Committee elected by the workers, and we were forced on strike. This strike taught me many things. The use of the police and the courts to break our strike taught me that workers needed more than a small union in an isolated shop to improve their wages and conditions.

"In 1940 this shop was again organized (under the protection of the Wagner Act) and our boss was forced, by law, to meet with us and negotiate his first union contract.

"As a result of my activities in this campaign I was given what I considered the chance of a lifetime—the chance to make my contribution to help eliminate low wages and poor working conditions in Cincinnati—I was given a job as organizer for our union, the job I hold today. [fol. 203] "Since that time I have assisted in organizing many thousands of Cincinnati workers into unions and in negotiating contracts to improve the security and standard of living of all Cincinnatians.

"During World War II, my work as a union representative in helping to maintain peaceful labor management relations, meet production quotas, promotion of the sale of War Bonds, etc., was classified as an essential occupation, exempting me from service. I was also a member of the Labor Advisory Committee to the War Production Board for the Machine Tool Industry.

"Due to a hernia condition I was classified as fit only for limited service and rejected by my Draft Board. Despite this I felt that I was not making my major contribution to the War effort, so I signed voluntary induction papers in an effort to get into the thick of things. I spent almost two years in the U. S. Army Air Forces as a Radio

Operator Mechanic. I was honorably discharged in November 1945 and immediately returned to my work with the union.

"My entire adult life has been spent in making positive contributions to society; improving the wages, working conditions and security of Cincinnati's industrial workers, and to defending and protecting the free democratic institutions of my country.

"My record of loyalty and devotion to my country and to [fol. 204] the people is an open book. I challenge the members of these Committees to similarly place their records before the people and let the people determine who is 'subversive'.

"What will my position be before this Commission?

"In the early days of our country many thousands of our citizens fought and died to build our Constitution. At late periods other thousands were persecuted, many died, for defending this Constitution against the witch hunters of Salem, and the perpetrators of the infamous Alien and Sedition Laws.

"Uncounted thousands of workers have fought, spent long terms in jail, many have died, in the long struggle to build their unions and to improve their wages and conditions.

"In recent years many hundreds of citizens, Doctors, Ministers, Lawyers, Writers, Professors, Students, Scientists, Artists and Union members have been persecuted for daring to defend the handiwork of the fathers of our country—the right to freedom of thought, freedom of worship, the freedom to speak and freedom of association—by refusing to cooperate with committees similar to this.

"I have personally been called before the House Un-American Committee of Washington, D. C., where paid labor spies and other gutter filth was used in an attempt to frame me and help destroy our union. For failure to cooperate with this Committee I was cited for contempt of Congress and late found not guilty by a Federal District Court in Washington.

[fol. 205] "Knowing the purpose of this Ohio Commission, and the kind of people who staff it, I proudly join with thousands of other patriotic Americans and will also refuse

to cooperate with it. I will refuse to allow myself to become a willing instrument to debase and destroy what Americans hold dearest to their hearts, their trade unions and the Constitution of our country and its democratic institutions through which they can seek and find solutions to their economic and political problems.

"I will continue to raise my voice for peace and cooperation among the nations of the world so that the lives of our sons may be spared and that my grandchildren may grow up to be normal humans and not just mere 'cannon fodder'. I will continue to fight to improve our standard of living through higher wages, lower taxes, Federal Low Cost Housing, Slum Clearance, Pure Drinking Water, FEPC, etc., for the American people.

"Does my position have support?

"I believe it does. Committees of this nature have been condemned by almost every legitimate trade union, AFL, CIO and Independent in America. Many churches and fraternal organizations are also on record as condemning such committees and their activities. Many outstanding Americans have condemned such committees. My own Local Union has gone on record instructing me not to cooperate with this Committee.

[fol. 206] "President Franklin D. Roosevelt also condemned the acts of such committees. In 1944 he said of the House Un-American Committee: 'Most fair-minded Americans hope that the committee will abandon its practice of merely providing a forum to those who, for political purposes or otherwise, seek headlines they could not otherwise obtain . . . .'

"U. S. Supreme Court: 'When the Constitution and Bill of Rights were written, our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned. And so they prescribed bill of attaninder.' (U.S. Supreme Court—in the Lovett case). 'If there is one fixed star in our Constitutional constellation, it is that no official high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an

exception, they do not now occur to us.' (US Supreme Court—June 14, 1943).

"Talmadge Raley, 1930 Vine Street, Cincinnati 10, Ohio."

If there are no further questions on the part of the Commission, the witness will be excused, and the Commission will recess until two p. m. this afternoon. Other witnesses have been subpoenaed and will be called promptly at two o'clock.

(Witness excused.)

(The hearing recessed at 1:15 o'clock until 2:00 o'clock, at which time the following further proceedings were had:)

[fol. 207] AFTERNOON SESSION 2:00 p.m.

Chairman Renner: The Commission will resume order. Counsel may call the next witness.

Mr. Isaacs: Mr. Chairman, I should like to call as the next witness Mr. Joseph Stern.

Chairman Renner: Mr. Stern, you will raise your right hand to be sworn.

(The witness was sworn by the chairman.)

Chairman Renner: Will you be seated, Mr. Stern?

Mr. Isaacs: Mr. Chairman, inasmuch as the witness, Mr. Joseph Stern, is also represented by Mr. Sydney Berger, who represented the previous witness, by agreement with Mr. Berger, it may be stipulated that Mr. Stern is appearing under the same objection as was raised on behalf of Mr. Raley.

Mr. Berger: Thank you very much.

Chairman Renner: Without objection from counsel, the Chair will ask the photographers present to take such pictures as may be permitted promptly, and then we shall proceed. If there are no other photographers, we will proceed with the questioning of the witness.

JOSEPH STERN being first duly sworn, was examined and testified as follows:

By Mr. Isaacs:

Q. Will you state your name, please?

[fol. 208] A. Joseph Stern.

Q. Where do you reside, Mr. Stern?

A. I wish to claim my privilege under the Fifth Amendment of the United States Constitution, and Section 1, Article 10 of the Ohio Constitution.

Q. What is there in either of those constitutions that permits a witness to refuse to state where he resides?

A. I claim the privilege under the Fifth Amendment of the United States Constitution, and Section 1, Article 10 of the Ohio Constitution.

Q. Is there something about the nature or character of the home in which you live that to admit you live there would make you subject to criminal prosecution?

A. The same answer.

Chairman Renner: The chair will request that the witness answer the question.

The Witness: I have answered the question.

Mr. Isaacs: Mr. Chairman, I ask that the witness be ordered and directed to answer the question.

Chairman Renner: The chairman directs the witness to answer the question relating to his address, the address of his residence in Cincinnati.

The Witness: The same answer.

By Mr. Isaacs:

Q. As a matter of fact, Mr. Stern, you reside at 3595 [fol. 209] Wilson Avenue in the city of Cincinnati, Ohio; is that not correct?

A. The same answer.

Chairman Renner: In order that we may have an understanding, when you say, "The same answer," you mean you are claiming privileges of the Ohio and Federal Bills of Rights which permit you to refuse to answer questions on the ground that they tend to incriminate; is that correct?

The Witness: The same answer.

Chairman Renner: You say, "The same answer"?

The Witness: That is correct.

Chairman Renner: I ask you whether we may assume when you say, "The same answer," you mean that you are refusing to answer on the ground that your answer might tend to incriminate you. That requires a yes or no answer.

The Witness: I am refusing to answer under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Ohio Constitution, as I understand them.

Chairman Renner: When you say, "The same answer," that is what you mean; is that correct?

The Witness: That is correct.

Chairman Renner: That is what I wanted to know.

By Mr. Isaacs:

Q. Where are you employed, Mr. Stern?

A. I am employed at the J. H. Day Company.

[fol. 210] Q. And where is the J. H. Day Company located?

A. On Spring Grove Avenue in Cincinnati.

Q. In what capacity are you employed there?

A. I am a lathe operator.

Q. What has been your educational background as far as formal schooling is concerned?

A. I completed two years of high school.

Q. And what high school did you attend?

A. Savannah High School, Savannah, Georgia.

Q. Were you born in the state of Georgia, Mr. Stern?

A. I was.

Q. Where and on what date?

A. I was born in Savannah, Georgia, on May 30, 1920.

Q. And you are a citizen of the United States by birth; is that correct?

A. I am.

Q. Have you ever taken any steps to divest yourself of that citizenship?

A. I claim the privilege.

Q. May we assume that you are a citizen of the United States as of the present moment?

Chairman Renner: Counsel, just a moment. When you say you claim the privilege, you claim the privilege of not replying by reason of the fact that your answer might tend to incriminate you?

[fol. 211] The Witness: I claim the privilege of not answering under the Fifth Amendment of the United States Constitution, and Section 1, Article 10 of the Ohio Constitution, as I understand them.

Chairman Renner: I do not insist that you recite in full the precise article or section of the Bill of Rights of the state of Ohio, or the Federal Constitution, but in your reply, if you are resorting to those sections, make it clear that you are resorting to those sections, or let us have an understanding that when you say, "The same answer," that that is what it means.

The Witness: It means that I claim the privilege of the Fifth Amendment, of the United States Constitution, and Article 1, Section 10 of the Ohio Constitution, as I understand them.

Chairman Renner: And when you say, "I claim the privilege," that is what you mean in full; is that correct?

The Witness: That is correct.

Chairman Renner: Proceed.

By Mr. Isaacs:

Q. Following the termination of your formal schooling, what has been your employment record?

A. I was employed as an errand boy, stock keeper, truck helper, helper on a truck, truck driver, waiter, bus boy, order clerk, office worker, route salesman, traveling sales-[fol. 212] man, service station attendant, manager of a service station and garage.

Q. In the past ten years, then, for what companies or firms have you worked?

A. International Harvester Company, Rock Island, Illinois; Fisher Body Company, Hamilton, Ohio; the Fox Company, Cincinnati, Ohio; Lodge & Shipley Company, Cincinnati, Ohio; J. H. Day Company, Cincinnati, Ohio.

Q. How long have you been a resident of the state of Ohio?

A. Since February 1, 1949.

Q. And from what city and state did you come to Ohio?

A. Los Angeles, California.

Q. Immediately before residing in Los Angeles, California, where did you reside?

A. Phoenix, Arizona.

Q. I will ask you, Mr. Stern, are you now or have you ever been a member of the Communist Party?

A. I claim the privilege.

Q. I will ask you if it is not a fact that your affiliation, your active affiliation, with the Communist Party dates back to the 1940's?

A. The same answer.

Q. Did you serve in the United States Army, Mr. Stern?

A. I did.

Q. What rating or rank did you hold?

[fol. 213] A. Started as a buck private and came out as a second lieutenant.

Q. Now, when you entered upon your career as a second lieutenant in the United States Army, were you asked, or required to sign an oath of allegiance to the United States government?

A. I was.

Q. Did you find your membership in the Communist Party inconsistent with the signing of that oath?

A. I think you are taking a lot for granted. You want to ask me if I still owe my allegiance to the Communist government, but don't put questions in my mouth.

Q. I ask you whether at the time you signed the oath of allegiance to the United States government in the United States Army, if you didn't find that inconsistent with your membership in the Communist Party.

A. I still say that is an assumption that you have not proved in a court of law.

Q. Do you intend to deny that?

A. I claim the privilege.

Q. You are given the privilege before this commission at the time you took an oath of allegiance to the United States Government, you were not a member of the Communist Party. Do you care to deny that?

A. I claim the privilege.

Q. Do you hold any reserve commission in the United [fol. 214] States Army?

A. I do not.

Q. Do you have any connection with the United States Army at the present time?

A. I don't understand the question.

Q. Do you have any connection, any affiliation, with the Army at the present time?

A. I don't understand the question.

Q. Other than the fact that you are receiving a pension from the United States Army of $112.50 a month, do you have any other connection with the United States Army? Are you still under the control of the United States Army in any manner?

A. I am not acquainted with the legal technicalities of Army reserve, or being out of Army reserve, and therefore, I don't feel that I am equipped to answer that question.

Q. Now, you are drawing a pension of $112.50 a month from the United States Army, are you not, Mr. Stern?

A. I am.

Q. Are you required to sign any oath of allegiance in connection with the drawing of that pension from the United States Government?

A. I don't recall.

Q. Would you find your present membership in the Communist Party inconsistent with such an oath of allegiance? [fol. 215] A. Again I feel that you are using questions which don't at all indicate facts, and therefore, I claim the privilege.

Q. Would you care to deny under oath at this time that you are a member of the Communist Party?

A. I claim the privilege.

Q. Now, when you were employed in Davenport, Iowa, were you a member of the Communist Party?

A. I claim the privilege.

Q. I ask you if it is not a fact on the 24th day of September, 1945, you were arrested by the Davenport, Iowa, Police Department for distributing Communist Party literature advertising the speech of William Z. Foster, who was then the chairman of the National Communist Party?

A. I claim the privilege.

Q. I ask you if it is not a fact that three days later on September 27, 1945, you were again arrested by the Davenport, Iowa, Police Department on the same offense?

A. I claim the privilege.

Q. Now, are you acquainted with Donald O. Spencer?

A. I claim the privilege.

Q. Was Donald O. Spencer a member of the Communist Party?

A. I claim the privilege.

Q. Now, Donald O. Spencer was much more generous in discussing you when he appeared before the Un-American Activities Committee of the House of Representatives in [fol. 216] September of 1952, September of this year. He testified that he was a former member of the Communist Party, and identified you as an active member of Farmall Local 108, and, with him, a member of the Communist Party. Were you at that time a member of the Communist Party?

A. I claim the privilege.

Q. He testified that he, you, and Ray Teeple were the top committee of the Quad-City area of the Communist Party. During 1946, were you a member of the top committee of the Communist Party in the Quad-City area?

A. I claim the privilege.

Q. I will ask you if it is not a fact that during the period of 1944, a meeting was held in the Sherman Hotel in Chicago by members of the Communist Party to decide what to do with you who was too militantly Communist in the farm equiment local?

A. What was the date?

Q. In the fall of 1944.

A. Repeat the question, please.

Q. The question is, do you know whether or not you were the subject of a Communist Party meeting to determine what to do with you because you were too militant in the farm equipment local union?

A. Well, Mr. Isaacs, that really would have been good. I was in the Army in 1944.

[fol. 217] Q. Do you know whether or not such a meeting was held?

A. I claim the privilege.

Q. I will tell you that Donald Spencer has testified that you were so militant in the farm equipment local union, it was feared that the Communist Party would lose control of the local, as your activities were stirring up activities in the local against the Communists. He testified you were too militant, and that you insisted that local members buy the Daily Worker and the Sunday Worker, and urged them to join the Communist Party.

A. Do you want an answer to that?

Q. Yes.

A. My date of employment in the Farmall Company in Rock Island, Illinois, is December, 1945. Previous to that time, I never worked for Farmall.

I might further say that the testimony of these stool pigeons is full of that stuff.

Q. Are you acquainted with Donald O. Spencer?

A. I claim the privilege.

Q. I will ask you if it is not a fact that during 1946 and 1947, you were the organizer for District 6 of the Communist Party in Rock Island, Illinois?

A. I claim the privilege.

Q. I will ask if you were not also subsequently the organizational secretary for the Maricopa Communist Party in [fol. 218] Phoenix, Arizona?

A. I claim the privilege.

Q. You stated that you came to the state of Ohio in February of 1949; is that correct?

A. Approximately. I wouldn't want to pin-point the date. I haven't got a very good memory for dates.

Q. I will ask you if it is not a fact that upon your coming to Cincinnati, you immediately became active in the affairs of the Communist Party here?

A. I claim the privilege.

Q. I will ask you if it is not a fact that you were assigned to the Avondale Branch of the Communist Party?

A. I claim the privilege.

Q. Do you know Frank Hashmall?

A. I claim the privilege.

Q. As a matter of fact, Frank Hashmall was the organizer for the Communist Party in this county, was he not?

A. I claim the privilege.

Q. I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this county?

A. I claim the privilege. I might also point out that that is a smear against the political party which is running candidates in these elections, and I consider that this type of activity is typical of the political smears that this kind of committee carries on throughout the country.

[fol. 219] Q. Would you say that the fact that you were active in the Progressive Party, or our statement that you were active in the Progressive Party, is a smear against the Progressive Party?

A. I didn't say I was active.

Q. Would our statement that you were active in the Progressive Party constitute a smear against the Progressive Party?

A. In the line of questioning you are opening up, I consider that the line of questioning is a smear.

Q. I ask whether it is not a fact that in February of 1949, on the instructions of the Communist Party, you participated in the picketing of the Sefferino Rink at the instructions of the Communist Party?

A. I will claim the privilege. I want the date on that and the name of the place.

Q. Sefferino Rink, February, 1949.

A. Thank you.

Q. I will ask you if it is not a fact that in April of 1949, as a delegate of the Communist Party of Hamilton county, you attended a Young Progressives of America organization at the union hall?

A. I claim the privilege.

Q. Isn't it a fact that Pete Seeger of the Weavers was the chief entertainer at that time?

A. I claim the privilege.

[fol. 220] Q. I ask you if it is not a fact that on May Day, 1949, you were in attendance at a Communist Party

May Day meeting at the Lincoln Community Center in this city?

A. I beg your pardon; I didn't get the date.

Q. May Day of 1945. That comes on the first day of May.

A. May Day of 1945; are you sure?

Q. 1949.

A. Where was that supposed to be?

Q. That meeting of the Communist Party which you attended was at the Lincoln Community Center, unless you want to state a denial for the record.

A. I claim the privilege.

Q. I will ask you if it is not a fact that in June of 1949, you attended Communist Party meetings at the home of James and Mattie Anderson, Apartment 1593, at 603 Clark Street?

A. Will you repeat that address, please?

Q. Apartment 1593, 602 Clark Street, in the apartment of James and Mattie Anderson, A-n-d-e-r-s-o-n.

A. I don't understand that address, 1593-603.

Q. Apartment 1593, in the building at 603 Clark Street.

A. I claim the privilege.

Q. I will ask you if it is not a fact that at that meeting which you attended at that residence, Robert Campbell, Ohio State Communist Party educational director, spoke?

A. I claim the privilege.

[fol. 221] Q. Do you know Robert Campbell?

A. I claim the privilege.

Q. Do you know whether or not Robert Campbell then was the Ohio State Communist Party educational director?

A. I claim the privilege.

Q. I ask you if it is not a fact that also in June of 1949, you were present at a Communist meeting held at 1064 Flint Street in Cincinnati?

A. I claim the privilege.

Q. I will ask you if it is not a fact that Frank Hashmall was the principal speaker at that time, replacing Robert Campbell who had been scheduled?

A. I claim the privilege.

Q. I will ask you if it is not a fact that during July of 1949, you conducted Communist Party Marxist study classes in your home?

A. I claim the privilege.

Q. I ask you if it is not a fact that in November of 1949 you attended a Communist Party meeting which was scheduled under the name of the Civil Rights Congress in Cincinnati?

A. I claim the privilege.

Q. I will ask you if it is not a fact that Yetta Land of Cleveland, Ohio, a charter member of the Communist Party in Ohio, was scheduled to be the principal speaker?

A. I claim the privilege.

[fol. 222] Q. I will ask you if it is not a fact that in January of 1950, you succeeded Sylvia Hashmall, wife of Frank Hashmall, as chairman of the Avondale Branch of the Communist Party?

A. I claim the privilege.

Q. Do you know Frank Hashmall?

A. I claim the privilege.

Q. Do you know Sylvia Hashmall?

A. I claim the privilege.

Q. As a matter of fact, in March of 1950, Frank and Sylvia Hashmall and their family moved in with you, didn't they?

A. No one has lived with me except that I lived with my mother-in-law and father-in-law when I came to Cincinnati, because I couldn't find an apartment in Cincinnati. Since that time, my wife and I and my children have lived in my home.

Q. Do I understand you to say that during March of 1950, Frank Hashmall and Sylvia Hashmall and their family moved into the same house with you?

A. What was that question?

Mr. Isaacs: Read the question.

(Question read.)

A. Is that the same question as you asked before? Will you read the other question?

(Previous question read.)

A. Is that the same question?

[fol. 223] By Mr. Isaacs:

Q. That is right.

A. I don't understand it is the same question.

Q. I will rephrase the question.

A. I want the question.

Q. Is it not a fact in March of 1950, Frank and Sylvia Hashmall, Frank Hashmall being the district organizer for the Communist Party, and I will add to it, your home became the Communist Party headquarters for this section?

A. I request that the previous questions be read.

Q. I am asking you that question; you can answer it.

A. I request that the previous questions be read.

Chairman Renner: The chair will ask the witness to answer the question that has been placed by Counsel. It is to be presumed that the witness is excused from answering the previous question. We are trying to make it easier for you, Mr. Stern.

The Witness: I plead the privilege.

By Mr. Isaacs:

Q. I take it you are not making the denial that you started to make before?

A. I invoke the privilege.

Q. I ask you if it is not a fact that in April of 1950, you attended the Communist Party meeting for the Hamilton county section, county-wide Communist Party meeting, [fol. 224] at 1064 Flint Street?

A. I plead the privilege.

Q. Do you know who is housed at 1064 Flint Street?

A. I plead the privilege.

Q. As a matter of fact, that is the headquarters of the Fur and Leather Workers Union, kicked out of the CIO as being Communist-dominated, isn't it?

A. I plead the privilege.

Q. Do you know who the speakers were at that meeting?

A. I plead the privilege.

Q. Do you know who Andrew Remes is?

A. I plead the privilege.

Q. Andrew Remes was the state executive secretary of the Communist Party at that time, wasn't he?

A. I plead the privilege.

Q. Do you know Martin Chancey?

A. I plead the privilege.

Q. Martin Chancey was state executive secretary whom Remes was replacing, was he not?

A. I plead the privilege.

Q. I ask you if it is not a fact that at this Communist Party meeting that you attended in April of 1950 at 1064 Flint Street, Andrew Remes, Martin Chancey and Frank Hashmall all spoke?

A. I plead the privilege.

[fol. 225] Q. Mr. Stern, did you on May 20, 1950, make an application for unemployment compensation under the Ohio Unemployment Compensation Law?

A. I plead the privilege.

Q. I will ask you if it is not a fact that on May 20, 1950, you signed the non-Communist affidavit under the Renner Amendment to the Ohio Unemployment Compensation Law as required by the statutes of the State of Ohio?

A. It seems that Mr. Renner's name gets injected in here in all kinds of places.

Q. I am asking you the question, did you sign the affidavit required under the Renner Amendment?

A. Have you got the affidavit present?

Chairman Renner: You answer the question, Mr. Stern.

The Witness: I don't recall. I plead the question.

By Mr. Isaacs:

Q. I ask you if it is not a fact that on May 20, when you falsely and fraudulently signed that affidavit before the Bureau of Unemployment Compensation, you were not in fact a member of the Communist Party?

A. Again, counsel is taking advantage of the immunity of that committee to make statements of which he has no knowledge.

Q. Will you deny before this commission here and now that on May 20, you signed a non-Communist affidavit, at which time you were in fact an active member of the Com-

[fol. 226] munist Party? Your denial on the record will wipe out any charge.

A. Mr. Isaacs, I will meet you any time in any hall in Cincinnati and debate my record with yours.

Chairman Renner: Mr. Stern, at the present time, you are required to tell the truth under the penalty of charges of perjury. In any hall where you are not under oath, you are at perfect liberty to make any irresponsible statement you wish to make.

Now, let us not extend any challenges. It is a very vain thing.

The Chair requests that you answer the questions put by counsel.

The Witness: I will answer your question. I might add that Mr. Isaacs and the members of this committee are acting under—

Chairman Renner: Before adding anything, will you answer the question?

The Witness: I will answer the question.

Chairman Renner: After you answer the question, you may add something if you wish.

The Witness: I decline to answer under the Fifth Amendment.

I might add—

Chairman Renner: You have not answered the question, so we will not permit you to add anything. Counsel will ask [fol. 227] the next question.

By Mr. Isaacs:

Q. I will ask you if it is not true in June of 1950, you attended a Communist Party section meeting at the home of Abe Bideman?

A. I plead the question.

Q. I ask you as a matter of fact if Frank Hashmall didn't speak on the subject of arranging funds for the Eugene Dennis defense?

A. I plead the question, Fifth Amendment.

Q. Are you acquainted with Joseph Brandt?

A. I plead the question.

Q. As a matter of fact, Joseph Brandt was formerly the Communist Party labor secretary in the state of Ohio, was he not?

A. I plead the question.

Mr. Berger: Excuse me a moment. I would like to call my client's attention to the fact that the last statement I heard was, he said he pleads the question.

Mr. Isaacs: I think that we may assume he pleads the privilege.

The Witness: I plead the privilege.

May I ask a question of fact? Can we go back and change the record to read, "I plead the privilege," instead of, "I plead the question"?

[fol. 228] Chairman Renner: The Chair will ask the stenotypist to change the reading of the witness' answers so that where the record now shows he has replied, "I plead the question," it shall show that his reply said, "I plead the privilege."

Mr. Berger: Thank you.

By Mr. Isaacs:

Q. I will ask you if it is not a fact that in January of 1951, you held a meeting of the Communist Party in your home at which time Joe Brandt, Joseph Brandt, Ohio Communist Party labor secretary, spoke about the 1950 National Communist Party Convention in New York City?

A. I plead the privilege.

Q. I will ask you if it is not a fact that in July of 1951, you participated in a meeting designed to take the Communist Party underground in this section?

A. I plead the privilege.

Q. I will ask you if it is not a fact that in October of 1951, you were assigned by the Hamilton county section of the Communist Party to assist in the founding convention of the National Negro Labor Council to be held in Cincinnati?

A. I plead the privilege.

Q. I ask you if it is not a fact that during 1952, you were active in a Communist Party front organization known as the Cincinnati Peace Committee, and held meetings in your home?

A. Will you repeat the name of the organization?

[fol. 229] Q. The Cincinnati Peace Committee.

A. A terrible word. I plead the privilege.

Q. I ask you if it is not a fact that the post office box of the Cincinnati Peace Committee, Post Office Box 1503, was rented by you?

A. I don't recall, so I will have to plead the privilege.

Q. Do you know anything about the Cincinnati Peace Committee?

A. I plead the privilege. Unfortunately, peace has become a subversive word to some people.

Chairman Renner: Unfortunately, some people have subverted the cause of peace.

The Witness: That is a question of who considers subversive as what. I match my patriotism against yours or any other people.

By Mr. Isaacs:

Q. I ask you if it is not a fact that as a member of the Communist Party, you have been holding Communist meetings in your home?

A. I plead the privilege.

Q. I ask you if it is not a fact that during 1952, you and your wife, Abe Biderman, and his wife, founded a new Communist front organization known as the South Avondale Playground Mothers Club?

A. Playgrounds are subversive, too. I plead the question. [fol. 230] Q. I will ask you if it is not a fact that you founded this organization, the South Avondale Playground Mothers Club, in order to attempt to secure recruits for the Communist Party?

A. Mr. Isaacs, I consider this a fishing expedition, preying on legitimate desires and needs of the people of Cincinnati,—

Chairman Renner: Mr. Stern, we are not interested in having you—

The Witness: —who want their people off the street; trying to smear an organization to save the life of kids.

Chairman Renner: Mr. Stern, this commission is not interested in what you consider.

The Witness: He asked me what I think.

Chairman Renner: We have subpoenaed you here to answer questions. I don't believe that your answer was responsive.

The Witness: In other words, you don't want my opinions?

Chairman Renner: I don't believe that your answer was responsive to the question.

The Witness: I am not a legal mind. I want to know whether you want my opinions in these hearings.

Chairman Renner: When your opinions are wanted, we shall ask them.

The Witness: Do you have the right to go into my opinions?

[fol. 231] Chairman Renner: I have the privilege of refusing to answer at any time.

The Witness: I ask you if you have the right to go into my opinions?

Chairman Renner: I believe that your opinions may be of interest. You are not required to state them.

The Witness: I am not required to state my opinions?

Chairman Renner: Not if in your opinion by so doing, you might tend to incriminate yourself.

The Witness: What about opinions that I don't think would incriminate myself? Do you have to?

Chairman Renner: It depends on what they are.

The Witness: In other words, you have the right to pry into my opinions.

Chairman Renner: It depends on the nature of them.

The Witness: That indicates that this is a thought control body. If you can pry into my opinions, you can pry into my thoughts.

By Mr. Isaacs:

Q. You would be amazed at how little interest we have in your opinions. Do you want to deny on the record upon instructions of the Communist Party of Hamilton county, you and the other persons named formed this South Avondale Playground Mothers Club as a Communist front organization?

A. I plead the privilege.

[fol. 232] Q. I didn't think you would want to answer that. I ask you, Mr. Stern, if it is not a fact that you are now at this moment still an active member of the Communist Party in Cincinnati, Ohio?

A. I plead the privilege.

Q. I ask you if it is not a fact that you and Abraham Biderman formed the top echelon of the Communist Party in this section?

A. I plead the privilege.

Mr. Isaacs: I have no further questions.

Chairman Renner: Do any members of the Commission have any questions?

Any questions from members of the Commission?

By Chairman Renner:

Q. Mr. Stern, did you at any time attend the School of Communism of Lenin in Moscow, Russia, known as the Lenin School?

A. Mr. Renner, I have given you my history of the places that I have been, and I stand on the record.

Q. Will you answer my question, Mr. Stern? Did you attend the Lenin School in Moscow?

A. Are you sure you mean Moscow, Russia?

Q. Yes.

A. I plead the question. A guy can get framed on anything here.

[fol. 233] Chairman Renner: I thought you would.

Are there any further questions?

The witness will be excused.

(Witness excused.)

* * * * * * *

[fol. 234] Mr. Isaacs: As the next witness, I should like to call Emmett Calvin Brown.

Chairman Renner: Will you raise your right hand and be sworn, Mr. Brown?

(The witness was sworn by the Chairman.)

Chairman Renner: Will you be seated, Mr. Brown?

Counsel may proceed.

EMMETT CALVIN BROWN being first duly sworn, was examined and testified as follows:

By Mr. Isaacs:

Q. Will you state your name, please?
A. Emmett Calvin Brown.
Q. Will you spell "Emmett" for the record, so we will be sure we have that correct?
[fol. 235] A. It can be spelled more than one way. Do you want all the ways it can be spelled?

Chairman Renner: Just the way you spell it.
The Witness: I spell it two different ways. I will spell the two for you. E-double m-e-double t; E-double m-i-double t.

By Mr. Isaacs:

Q. Do you have any particular preference?
A. None.
Q. Where do you live, Mr. Brown?
A. Look, I am going to get one thing straightened out. Before—
Q. Where do you live, Mr. Brown?
A. I say, before I answer your question, I have a statement.

Chairman Renner: Mr. Brown, will you answer the question first, and then make your statement?
The Witness: All right, I will do that.

By Mr. Isaacs:

Q. Where do you live?
A. 3158 Harvey Avenue, Avondale.

Chairman Renner: Now, you may make a statement relating to the question.
The Witness: The statement I am going to make will be relative to the questions in general.
Chairman Renner: If you want to make a statement—
[fol. 236] The Witness: You don't even know what I am going to say.

Chairman Renner: Except you have told me it will be a general statement. Such general statement you will kindly withhold until after counsel has finished asking questions. At that time, permission will be granted you to make any statement you wish to make, any brief statement you wish to make. Until then, you will kindly answer the questions put to you by counsel.

The Witness: First of all, I don't have counsel here; if you want me to answer any questions that you are going to ask me, under the circumstances, then not having the educational background from the standpoint of legality, you have been doing a job, and I am making statements, see? You have been doing the job on me all the way along, trying to break me. When I say you sent people to my house, I can say you sent them there to make a deal.

Chairman Renner: Mr. Brown,—

The Witness: And if you use the same tactics on me—

Chairman Renner: You will be given the opportunity to make your statement later. We must conduct this hearing in an orderly fashion.

The Witness: You haven't been doing it so far.

By Mr. Isaacs:

Q. You say you reside at 3158 Harvey Avenue, is that correct?

[fol. 237] A. I made that statement.

Q. Where and when were you born?

A. I was born August 24, 1925.

Q. Where were you born?

A. In Cincinnati, Ohio, General Hospital.

Q. Have you been a resident of the state of Ohio and of Cincinnati all of your lifetime?

A. With the exception of the time that I spent in the service, which I stated to you in my statement, open there in the paper, when I volunteered for the service. With the exception of that time, I have been a resident of Cincinnati, Ohio.

Q. And what has been your educational background?

A. I refuse to answer that question. I invoke my rights and privileges under the Fifth Amendment.

Q. Is there some particular illegal institution which you attended or some Communist Party school that you attended that makes you hesitate to reveal where you were educated?

A. No, I just don't think it is your business.

Chairman Renner: We will determine that, Mr. Brown.

By Mr. Isaacs:

Q. Do I understand, for the record, you are refusing to answer the question because you feel it is not our business?

A. The answer is the same.

Mr. Isaacs: May the record show that, please.

[fol. 238] Q. What has been your employment record in recent years, Mr. Brown?

A. I refuse to answer that question.

Chairman Renner: On what ground?

The Witness: Invoking my rights under the Fifth Amendment.

By Mr. Isaacs:

Q. Has there been anything illegal about your employment in the state of Ohio?

A. My employment in the state of Ohio has been so sporadic, based on the intimidation by people like you, that it is almost impossible to make a statement in regard to it, because of its sporadic.

Q. You have been intimidated for twenty-five or thirty years?

A. I am not twenty-five or thirty years old.

Q. How old are you?

A. You add it up. I told you I was born August 24, 1925. I couldn't be fifty.

Q. Mr. Brown, are you now or have you ever been a member of the Communist Party?

A. I refuse to answer that question, and I invoke my rights under the Fifth Amendment.

Q. As a matter of fact, it was in July of 1946 that you did join the Communist Party here in Cincinnati, was it [fol. 239] not, Mr. Brown?

A. That is what you say.

Chairman Renner: Will you answer the question?

By Mr. Isaacs:

Q. Are you denying—

A. I am not answering or denying; I am invoking my rights. I am not refusing, but I am invoking my rights.

Q. Now, when you joined the Communist Party in July of 1946, you were assigned to the West End Branch of the Communist Party, were you not?

A. The answer is the same.

Chairman Renner: What do you mean when you say "The answer is the same"?

The Witness: I mean when I say "The answer is the same," the preceding question that was asked me, linking up with the next question that is asked me, I answered the first question. I said I invoked the Fifth Amendment of the United States Constitution.

Chairman Renner: You mean you refuse to answer?

The Witness: I did not say I refuse. I didn't refuse and I don't know what you mean. I said, "invoked." Do you know what the word "invoked" means?

Chairman Renner: Do you refuse to answer?

The Witness: The answer is the same.

Chairman Renner: Do you refuse to answer the question?

[fol. 240] The Witness: I invoke the privilege of the Fifth Amendment of the United States in regard to the question.

Chairman Renner: The Fifth Amendment of the Constitution—

The Witness: Just a moment. I understand it to mean that I don't have to give evidence that I consider incriminate me. Since I am not trained legally as you are, I will decide what is expedient for me to answer, and what is not expedient. If you don't like it, you can take grounds otherwise.

Chairman Renner: I ask you whether you refuse to answer the question.

The Witness: The question has been answered.

Chairman Renner: Counsel will proceed.

By Mr. Isaacs:

Q. Do you remember where you worked at the time you joined the Communist Party in July of 1946?

A. The answer is the same.

Q. As a matter of fact, you were employed at the Norwood Chevrolet plant, weren't you?

A. The answer is the same.

Q. Do you remember who it was that recruited you into the Communist Party?

A. The answer is the same.

Q. It was William Sanneman that recruited you into the Communist Party, wasn't it?

[fol. 241] A. The answer is the same.

Q. Do you remember attending an early meeting of the Communist Party and promising to get twenty new subscriptions to the Daily Worker?

A. The answer is still the same.

Q. I ask you if it is not a fact that during 1946, you tried to use the fact of your employment at the Norwood Chevrolet plant to get an automobile to be used by the Hamilton County Communist Party?

A. I invoke the privilege of the Fifth Amendment on that particular question.

Q. I will ask you if it is not a fact that during September of 1946, you attended a two-week Communist Party school in Dayton, Ohio?

A. The answer is the same.

Q. I ask you if it is not a fact that that school was conducted by George Siskin, a Communist Party teacher sent in by the state of New York?

A. The answer is the same.

Q. I will ask you if it is not also a fact that you obtained a false and fraudulent medical certificate from a doctor in the city of Cincinnati in order to excuse your absence from the Chevrolet plant while you were attending that Communist Party school in Dayton, Ohio?

A. The answer is the same.

[fol. 242] Q. Are you simply invoking the privilege of the Fifth Amendment and refusing to answer that question, or are you making a denial of that statement?

A. I explained to, I assume, Mr. Renner, here, the procedure I followed. As I have said before, and I will restate again, I do not have the training, and you know from the record that I am not a legal mind. What I am doing here will affect me. I explained to you how I feel about you and your committee in general. It was not secret. I have got it here. I can read it again. The papers won't print it, in content.

Now, I am going to answer you the way I want to answer you, see. You have got that, now?

I will again say I invoke the privileges of the Fifth Amendment. I even wrote it down. I will give it to you to read, if you don't understand it otherwise.

Mr. Corrigan: Mr. Isaacs, I noticed the witness has his notebook, but he doesn't seem to have a pencil. Could he be provided with one?

The Witness: I have a pencil when I want to use one, thank you.

By Mr. Isaacs:

Q. I will ask you if it is not a fact that in 1947, you were assigned to the Walnut Hills Branch of the Communist Party, and regularly attended the meetings of that branch?

A. I invoke the privileges of the Fifth Amendment of [fol. 243] the Constitution of the United States with regard to that particular question you project.

Q. I ask you if it is not a fact that on October 12, 1947, you were chosen as one of the delegates from Hamilton county to attend the state Communist Party convention in Cleveland, Ohio?

A. The answer is the same.

Q. I ask you if it is not the fact that you also attended —that also attending with you and fellow delegates were Robert Gunkel, Margaret McCrerey, Dorothy Pilder, Lewis Renfro, Charles Payne, Tevis Schooler, Phil Parr, and Emily Sokol?

A. The answer is the same.

Q. Are you acquainted with any of those people?

A. The answer is the same.

Q. Are you acquainted with Robert Gunkel?

A. The answer is the same.

Q. Did you know Margaret McCrerey?

A. The answer is the same.

Q. As a matter of fact, she was formerly your wife, was she not?

A. If you know, you shouldn't ask me.

Q. How about Dorothy Pilder?

A. She wasn't my wife; I will assure you that.

Q. How about Lewis Renfro?

[fol. 244] A. The answer is the same.

Q. Tevis Schooler?

A. The answer is the same.

Q. Phil Parr?

A. The answer is the same.

Q. Do you know Gus Hall?

A. The answer is the same.

Q. Gus Hall was the Communist organizer of the Party at that time, was he not?

A. The answer is the same.

Q. And he has since been convicted of conspiracy to violently overthrow the Government of the United States?

A. The answer is the same.

Q. Wasn't he the principal speaker of the Party that you attended as a delegate from Cincinnati?

A. Are you saying to me that I was there definitely; do you know that?

Q. I am stating it as a fact and asking you to affirm or deny the fact.

A. Do you have proof?

Q. The proof will be forthcoming. The moment you deny under oath that you were present at that Communist Party convention as a delegate from Cincinnati.

A. There will be no days like that, Brother, no.

Q. Your answer is, no, you were not present?

[fol. 245] A. The answer is the same.

Chairman Renner: What do you mean, "the answer is the same"?

The Witness: In regard to that question, in the manner in which that question was phrased, I again invoke—see—

the Fifth Amendment of the Constitution of the United States, see? Do you understand what that means?

Chairman Renner: That is what I wanted.

By Mr. Isaacs:

Q. I am willing to rephrase the question.

A. No matter how you rephrase the question—

Q. That you were a delegate to the Communist convention.

A. No matter how you phrase the question, the question is leading. It is a question to trap me. I am not stupid. I may look stupid, but I am not. I am not going to answer that question the way you want me to answer. The way I want to answer it is the way I want to answer it.

Q. How do you want to answer?

A. It has been answered in the way I want it answered.

Q. But you are refusing to state because it might incriminate you?

A. That is what you say. I didn't phrase it that way.

Q. How do you phrase it?

A. I said I invoke, in regard to the question projected to me, the privileges of the Fifth Amendment. That is what [fol. 246] I said.

Q. I will ask you if it is not a fact that in November of 1947, you taught Communist Party Marxist classes at the Walnut Hills Communist Party meeting?

A. Now, you accuse me of being a teacher; is that right?

Q. Right.

A. The answer is the same.

Q. Do you affirm or deny that fact that you were a teacher at the Communist Party meeting held to discuss Marxist principles?

A. I did neither one. There was no affirmative here. I invoke the privilege of the Fifth Amendment.

Q. I will ask you if it is not a fact that on September 27, 1948, you were assigned by the Communist Party of Cincinnati to address a Young Progressives of America meeting on the University of Cincinnati campus?

A. The answer is the same.

Chairman Renner: Mr. Brown, when you say the answer is the same, each time that you have given that reply, do

you mean to say that you refuse to answer on the ground that the answer might tend to incriminate you? You are privileged to refuse to answer based on the rights granted by the Fifth Amendment to the Federal Constitution; is that correct?

The Witness: No, it is not correct.

Chairman Renner: What do you mean when you say the [fol. 247] answer is the same?

The Witness: I mean exactly what I say, and I limit my words in content so as not to let you and the rest of the committee trap me, see? All right; so, I simply say what I said before, that I invoke my rights under the Fifth Amendment, and I am sure you understand what I mean. There is no cause for me to do a great deal of elaboration here.

Chairman Renner: I am simply trying to clarify, Mr. Brown. What do you invoke when you invoke your rights under the Fifth Amendment of the Constitution?

The Witness: As I understand it—again, not being a legal mind—I am not a Harvard graduate or anything, you know.

Chairman Renner: Yes.

The Witness: All right. My understanding, see, of this Fifth Amendment and the First, you know, to one degree or another, from my understanding of it, you know, is that a person doesn't have to give evidence against themselves if they feel—you see, I am not freezing, exactly, that that stuff would be incriminating, if they tell it. They may not know it; they may not feel so. That covers a large category. That is what I am doing here.

Chairman Renner: Each time you have replied by saying, "The answer is the same," that full explanation that you have just given, is that what you mean; is that correct? [fol. 248] The Witness: I understand this amendment to mean that I can't be forced to testify against myself.

Chairman Renner: And each time that you say the answer is the same, you mean to invoke that right; is that correct?

The Witness: When a question is projected to me—

Chairman Renner: Will you answer my question?

The Witness: By you, I will answer that question on the

basis of that question that is projected at that time. I am not going to cover a whole category of questions, because you have asked some questions which I didn't answer in the same manner, and in the process, you will ask me more questions which I may think at that time to be expedient to answer in a different way.

Chairman Renner: I am simply trying to clarify for the record what you mean each time you say, "The answer is the same."

The Witness: Each time I use the words, "The answer is the same," you ask me again what I mean by it, and I will explain it to you.

Chairman Renner: You have told me what you mean by it. I want the record to show that each time you have used it, and each time you propose to use it in the future, it will have that same meaning. Is that correct?

The Witness: No, it is not correct. I can't presuppose what you are going to say, and if I make a blank statement [fol. 249] like that, you can hold me to that.

Mr. Isaacs: Mr. Chairman, I think you are wasting your time by trying to save this witness from a contempt citation by reading the grounds.

The Witness: You haven't had any mercy on me so far, buddy, so don't start now. I will make it plain just how I feel about you. Don't show me no mercy. I wouldn't show you none, believe me.

By Mr. Isaacs:

Q. All right. On July 9, 1947, did you attend a special Party meeting of the Party unit leaders called by Robert Gunkel to hear Martin Chancey discuss a report of the Communist Party meeting held in New York?

A. I invoke the privilege.

Q. I will ask you if it is not a fact that in November of 1948, you attended a Communist Party Marxist youth group in the west end of Cincinnati at 1036 Wesley Avenue?

A. I invoke the privilege.

Q. Now, do you know who lived at 1036 Wesley Avenue at that time?

A. I invoke the privilege.

Q. As a matter of fact, that was your grandparents' home, wasn't it?

A. I invoke the privilege.

Q. And you used your grandparents' home to set up a [fol. 250] cell of the Communist Party?

A. I invoke the privilege.

Q. I ask you if it is not a fact that on September 19, 1948, you attended a Communist Party meeting in the Ritz Ballroom in Cincinnati, Ohio, at which time Gus Hall was the principal speaker?

A. Again, I invoke the privilege.

Q. I will ask you if it is not a fact that on the following day, the following night, you attended another Communist Party meeting held at the Manse Hotel, where Gus Hall spoke again?

A. Again, I invoke the privilege.

Q. I will ask you if it is not a fact that during 1948, you were made a member of the Communist Party Agitprop unit; "Agitprop" being a combination of "agitation" and "propaganda"?

A. Now, you accuse me of being a stragestician, do you?

Chairman Renner: Can you spell that word?

The Witness: I used the word "stragestician"; I will let you spell it.

By Mr. Isaacs:

Q. I will ask you if it is not a fact that you were made a member of the Agiprop and represented the Auto Workers' Branch of the Communist Party.

A. I invoke the privilege.

Q. I will ask you if it is not a fact that in March of [fol. 251] 1949, you attended a special Communist Party meeting at the Lincoln Community Center, at which time, the principal speaker was Ella Reeve Bloor, national figure of the Communist Party?

A. The answer is the same.

Q. I will ask you if it is not a fact that at that meeting, Frank Hashmall presided and spoke about raising funds to defend the Communist traitors on trial in New York City?

A. The answer is the same.

Q. I will ask you if it is not a fact that in April of 1949, you attended a Communist Party meeting at the Fur and Leather Workers Union Hall at 1064 Flint Street?

A. The answer is the same.

Q. I will ask you if it is not a fact that during all of 1949, you were in regular attendance at a Communist Party meeting in the city of Cincinnati?

A. I invoke my privilege.

Q. I will ask you if it is not a fact that in March of 1949, you attended a Communist Party meeting at the home of Mattie and James Anderson?

A. The answer is the same.

Q. Who lived in Apartment 1593 at 602 Clark Street, to hear Abraham Biderman give a lecture on capitalism, socialism and Communism?

A. The answer is the same.

Q. I will ask you if it is not a fact that during May of [fol. 252] 1949 with the other Communist Party members, you formed a protest delegation to go to Columbus, Ohio, to oppose the Bartunek Loyalty Oath Bill?

A. I invoke my privileges under the Fifth Amendment.

Q. I ask you if it is not a fact that during 1949, you attended Marxist study meetings at the home of Abraham Biderman?

A. The answer is the same.

Q. I ask you if it is not also a fact that during 1949, you assisted in the formation of a Communist Party front organization known as the Workers Club, to be used as a source of recruits into the Communist Party?

A. The answer is the same.

Q. I ask you if it is not a fact that you subsequently became chairman of that Communist front organization?

A. The answer is the same.

Q. I ask you if it is not a fact that in February of 1950, you caused to be distributed a leaflet stated to be issued by the Workers Club, Emmett C. Brown, Chairman, 1064 Flint Street?

A. Is that a fact?

Q. I am asking you to affirm or deny that fact.

A. If you know it, why ask me to affirm?

Chairman Renner: Answer the question, Mr. Brown.

The Witness: I invoke the privileges of the Fifth Amendment.

[fol. 253] By Mr. Isaacs:

Q. I will ask you if it is not a fact that as chairman of this Communist front organization, you led a march on the Public Welfare Building at 411 Lincoln Park Drive in Cincinnati in February of 1950?

A. The answer is the same.

Q. I will ask you if it is not a fact that in March of 1950, speaking for the Workers Club, you, along with Frank Hashmall, speaking on behalf of the Communist Party, made a protest to the Cincinnati City Council on the proposed loyalty oath for Cincinnati employees?

A. Are you saying that I was affiliated with Hashmall at that time, when he made the statement that you said he made?

Q. That is right. Do you care to affirm or deny that fact?

A. The answer is the same.

Q. I will ask you if it is not a fact that on March 17, 1950, you attended the organizing meeting in Cincinnati for the new Communist youth organization, the Labor Youth League?

A. The answer is the same.

Q. I will ask you if it is not a fact that on May 20 or 21, you attended the state meeting in Cleveland of the Labor Youth League?

A. The answer is the same.

Q. I ask you if it is not a fact that in April of 1950, you attended Communist Party meetings at the home of [fol. 254] Abraham Biderman, one particularly at which Arnold Johnson was the principal speaker?

A. The answer is the same.

Q. I will ask you if it is not a fact that during 1950, you held Communist Party meetings in your home?

A. The answer is the same.

Q. I will ask you if it is not a fact that in December of 1950, you were again a delegate from the Hamilton county section of the Communist Party to the state Communist Party convention in Cleveland, Ohio?

A. The answer is the same.

Q. I will ask you if it is not a fact that in March of 1951, you attended a Communist Party dinner in Cleveland, Ohio, at which time, Philip Frankfeld was introduced as the new district organizer of the Communist Party in the state of Ohio?

A. The answer is the same.

Q. Do you know Philip Frankfeld?

A. The answer is the same.

Q. Do you know the fact that Philip Frankfeld has since been convicted by the Federal Government for conspiring to violently overthrow the government of the United States?

A. The answer is the same.

Q. I will ask you if it is not a fact that Robert Campbell and Gus Hall, were also speakers at that same Communist [fol. 255] Party banquet in Cleveland, Ohio?

A. The answer is the same.

Q. I will ask you if it is not a fact that on February 15, 1952, you signed a non-Communist affidavit required under the Renner Amendment to the Ohio Unemployment Compensation Law?

A. The answer is the same.

Q. I will ask you if it is not a fact that on that date, you falsely and fraudulently obtained money from the State of Ohio by virtue of the fact that you said you were not a member of any party advocating the violent overthrow of the government of the United States?

A. The answer is the same.

Q. I will ask you if it is not a fact that in October of 1951, you were assigned by the Communist Party to work with the National Negro Labor Council in their founding convention held here in Cincinnati?

A. The answer is still the same.

Q. I ask you if it is not a fact that you are now, as of this moment, an active member of the Communist Party in Cincinnati, Ohio?

A. The answer is the same.

Mr. Isaacs: I have no further questions.

Chairman Renner: Do any members of the Commission have questions?

I have a few questions.

[fol. 256] By Chairman Renner:

Q. Mr. Brown, were you ever employed by the Fisher Body plant at Norwood, Ohio?

A. The answer is the same.

Q. Is there anything about being employed at that plant which might tend to incriminate you?

A. The answer is the same.

Q. Did you and Phil Parr and Abe Biderman picket relief headquarters on Lincoln Parkway in 1948, and again in 1949?

A. The answer is the same.

Q. How many people have you recruited into the Communist Party?

A. The answer is still the same.

Q. Isn't it true that prior to three years ago, you had recruited as many as sixteen Negro people into the Communist Party?

A. The answer is the same.

Q. Do you know Jerry Maxey of Cincinnati?

A. The answer is the same.

Q. Will you affirm or deny that you take orders from Abe Biderman in carrying out Party instructions in Hamilton county?

A. The answer is the same.

Q. Isn't it a fact that you have been an errand boy for Mr. Biderman and Mr. Stern in connection with Party activities in Hamilton county?

[fol. 257] A. First of all, Mr. Renner, I am not a boy. I am a man, regardless of whether you recognize me as a man or not, not being a Negro.

Q. The elevator boy in my office building is seventy years old.

A. Either Biderman or anybody else's; do you understand that?

Q. Do you deny that—

A. I say, do you understand that?

Q. Do you affirm or deny that you have run errands for Abe Biderman and Joseph Stern?

A. I invoke the privilege.

Q. Were you active in 1947 in the election in the city of Cincinnati in supporting any candidate or any issue on the ballot in that election?

A. I invoke the privilege of the Fifth Amendment.

Q. It is everybody's privilege to participate in elections, is it not?

A. Not all over this country, it is not. In Alabama and Mississippi, and a few more places I could name, it is not. I dare say that in Cincinnati, based on the hysteria that people like you have worked up, such organizations as the Third Party, for instance, are not able to be on the ballot.

Q. Will you answer my question?

A. Your question has been answered by me.

[fol. 258] Q. It has not. I will ask the question again: Did you actively participate in the city elections in the city of Cincinnati in 1947 on behalf of any candidate or any issue?

A. The answer is the same.

Q. By that, you mean you invoke the privileges under the Fifth Amendment?

A. I invoke my privileges under the Fifth Amendment, period.

Chairman Renner: Do any members have any further questions?

Pursuant to the announced determination of Local 766, Mr. Brown, not to cooperate, you have very successfully not cooperated. You will be excused.

The Witness: Can I make a statement now?

Chairman Renner: If you have a written statement, you may leave it with the Commission.

The Witness: I haven't got a written statement. You told me before when I tried to talk that I could make statements at the end of your talk.

Chairman Renner: You have no written statement? You may make an oral statement.

The Witness: The oral statement I would like to make now, first of all, the editor of the "Post" paper informs me that you, Mr. Renner, told him that I was a member of the United Electrical Workers. He also said that he thought [fol. 259] another man who I understand to be affiliated with those at United Electrical Workers; the papers today carry, within the framework of the story they printed, a story to the effect that I am a member of that particular union.

Now, not that I would be ashamed—

Mr. Isaacs: If you want to be on the record as denying it, we should give Mr. Brown the privilege of denying that he is a member of Local 766, United Electrical Workers.

The Witness: You are not going to put words in my mouth, even if you did go to school a few more days than I did.

I want to know this: The papers printed it. They are supposed to be papers that have an understanding on certain things. Why did they tell their story? The Post retracted it. It is in the paper again today, in another paper I was reading there. Why is this committee going and telling them that, or did you not do it? I told each paper I was not affiliated with these people. Why do they want to affiliate me with a union? I am not affiliated with, and never have been.

Mr. Isaacs: I can understand your displeasure.

The Witness: You can understand my displeasure? I want to know why the committee automatically makes me a part of something I am not a part of. Did Mr. Renner not tell the paper I was a member of the UE, and if so, why?

Chairman Renner: Frankly, I do not recall, Mr. Brown.

[fol. 260] The Witness: Why can't you answer me yes or no, Mr. Renner? Yes or no?

Mr. Schneider: Why don't you answer yes or not?

The Witness: Do you have to speak for Mr. Renner? Is he adolescent or not?

Mr. Isaacs: I suggest we get on with the next witness so that we can get ready to finish.

The Witness: I am just using the same procedure you are.

A Spectator: You didn't answer his questions; why do you want him to answer yours?

The Witness: Are you an attorney?

The Spectator: No, sir.

Chairman Renner: That is all.

(Witness excused.)

Mr. Schneider: I suggest that the sergeant-at-arms be instructed to repel demonstrations from the audience.

Chairman Renner: I believe the sergeant-at-arms will keep things from getting out of control, Mr. Schneider.

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[fol. 261]

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS, CRIMINAL DIVISION

No. 65746

Indictment for Contempt

Court Finding

THE STATE OF OHIO,

—vs—

TALMADGE RALEY,

JUDGMENT OF CONVICTION (RALEY)

This cause came on this day to be heard, the Defendant having waived a trial by Jury, in writing, and was submitted to the Court.

And the Court having heard the evidence and arguments of Counsel, finds that said Defendant Talmadge Raley, is Guilty of Contempt as charged in the 1st-2nd-3rd-4th-5th-6th-7th-8th-9th-10th-11th-12th-13th-14th-15th and 16th count of the Indictment.

[fol. 262]

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS, CRIMINAL DIVISION

No. 65746

Indictment for Contempt

THE STATE OF OHIO,

—vs—

TALMADGE RALEY,

SENTENCE (RALEY)

The Defendant herein having been convicted of Contempt, as charged in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th,

10th, 11th, 12th, 13th, 14th, 5th, (sic) and 16th, counts of the Indictment, was this day brought before the Court and being informed of the finding of the Court, was inquired of if he had anything to say why Judgment should not be pronounced against him and having nothing further to say than he hath already said.

It is therefore Ordered and Adjudged by the Court that on the charge of Contempt contained in the 1st count of the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, and kept at hard labor for a period of Ten days, and that the Defendant pay a Fine of Five-Hundred ($500.00) Dollars, and costs of this Prosecution and Execution is awarded.

The Defendant is to stand committed until said Fine and Costs are paid or he be allowed a credit of $3.00 per day for each day of such confinement, or he be otherwise legally discharged.

It is further Ordered and Adjudged by the Court that on the charge of Contempt, contained in the 2nd count of the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, for a period of Ten days, this Sentence to run concurrently with Sentence imposed in 1st count; and the Defendant pay a Fine—of Five-Hundred ($500.00) Dollars, and costs of this Prosecution. This Fine and Costs remitted.

CLERK'S NOTE.—Sentences under Counts 3 through 16 were same as for Count 2 with the fine and costs also being remitted.

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[fol. 265]

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS, CRIMINAL DIVISION

No. 65747

Indictment for Contempt

Court Finding

THE STATE OF OHIO,

—vs—

JOSEPH STERN,

JUDGMENT OF CONVICTION (STERN)

This cause came on this day to be heard, the Defendant having waived a trial by Jury, in writing, and was submitted to the Court.

And the Court having heard the evidence and arguments of Counsel, finds that said Defendant Joseph Stern, is Guilty of Contempt as charged in the 1st and 2nd count of the Indictment.

[fol. 266]

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS, CRIMINAL DIVISION

No. 65747

Indictment for Contempt

THE STATE OF OHIO,

—vs—

JOSEPH STERN,

SENTENCE (STERN)

The Defendant herein having been convicted of Contempt, as charged in the 1st and 2nd count of the Indictment, was this day brought before the Court and being informed of the

finding of the Court, was inquired of if he had anything to say why Judgment should not be pronounced against him and having nothing further to say than he hath already said.

It is therefore Ordered and Adjudged by the Court that on the charge of Contempt contained in the 1st count of the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, and kept at hard labor for a period of Ten days, and that the Defendant pay a Fine of Five-Hundred ($500.00) Dollars, and costs of this Prosecution and Execution is awarded.

The Defendant is to stand committed until said Fine and Costs are paid or he be allowed a credit of $3.00 per day for each day of such confinement, or he be otherwise legally discharged.

It is further Ordered and Adjudged by the Court that on the charge of Contempt, contained in the 2nd count of the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, for a period of Ten days, this Sentence to run concurrently with Sentence imposed in 1st count; and the Defendant pay a Fine of Five-Hundred ($500.00) Dollars, and costs of this Prosecution. This Fine and Costs remitted.

[fol. 267]

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS, CRIMINAL DIVISION

No. 65749

Indictment for Contempt

Court Finding

THE STATE OF OHIO,

—vs—

EMMETT CALVIN BROWN,

JUDGMENT OF CONVICTION (BROWN)

This cause came on this day to be heard, the Defendant having waived a trial by Jury, in writing, and was submitted to the Court.

And the Court having heard the evidence and arguments of Counsel, finds that said Defendant Emmett Calvin Brown, is Guilty of Contempt as charged in the 1st-2nd-3rd and 4th count of the Indictment.

[fol. 268]

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS, CRIMINAL DIVISION

No. 65749

Indictment for Contempt

THE STATE OF OHIO,

—VS—

EMMETT CALVIN BROWN,

SENTENCE (BROWN)

The Defendant herein having been convicted of Contempt, as charged in the 1st, 2nd, 3rd and 4th count of the Indictment, was this day brought before the Court and being informed of the finding of the Court, was inquired of if he had anything to say why Judgment should not be pronounced against him and having nothing further to say than he hath already said.

It is therefore Ordered and Adjudged by the Court that on the charge of Contempt contained in the 1st count of the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, and kept at hard labor for a period of Ten days, and that the Defendant pay a Fine of Five-Hundred ($500.00) Dollars, and costs of this Prosecution and Execution is awarded.

The Defendant is to stand committed until said Fine and Costs are paid or he be allowed a credit of $3.00 per day for each day of such confinement, or he be otherwise legally discharged.

It is further Ordered and Adjudged by the Court that on the charge of Contempt, contained in the 2nd count of

the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, for a period of Ten days, this Sentence to run concurrently with Sentence imposed in 1st count; and the Defendant pay a Fine—of Five-Hundred ($500.00) Dollars, and costs of this Prosecution. This Fine and Costs remitted.

It is further Ordered and Adjudged by the Court that on the charge of Contempt, contained in the 3rd count of the indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, for a period of Ten days, this Sentence to run concurrently with Sentence imposed in 1st count; and the Defendant pay a Fine—of Five-Hundred ($500.00) Dollars, and costs of this Prosecution. This Fine and Costs remitted.

It is further Ordered and Adjudged by the Court that on the charge of Contempt, contained in the 4th count of the Indictment the Defendant be imprisoned in the County Jail, of Hamilton County, Ohio, for a period of Ten days, this Sentence to run concurrently with Sentence imposed in 1st count; and the Defendant pay a Fine—of Five-Hundred ($500.00) Dollars, and costs of this Prosecution. This Fine and Costs remitted.

[fol. 269]

IN THE COURT OF APPEALS, FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, No. 7856

STATE OF OHIO, Plaintiff-Appellee,

—VS—

TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN, Defendants-Appellants.

JUDGMENT ENTRY AFFIRMING IN PART AND REVERSING IN PART JUDGMENT OF COURT OF COMMON PLEAS

This day this cause came on to be heard upon the appeal on questions of law, assignments of error, bill of exceptions, briefs, the transcript, and the original papers and pleadings from the Court of Common Pleas of Hamilton County,

Ohio, and upon argument of counsel. Upon consideration whereof, the Court finds as follows:

That there is error manifest upon the face of the record to the prejudice of the appellants in this, to-wit: that the Court erred in finding defendant Raley guilty on the first, fourth, fifth, sixth, seventh and eighth counts, and the defendant Stern guilty on the second count.

It Is Therefore Considered and Ordered by this Court that the judgment of the Court of Common Pleas be, and the same is hereby, affirmed as to the second, third, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth and sixteenth counts in the indictment of defendant Raley, and as to the first count in the indictment of defendant Stern, and as to the first, second, third and fourth counts in the indictment of defendant Brown.

As to all other counts in said indictments, It Is Considered, Ordered and Adjudged by this Court that the judgment of the Court of Common Pleas of Hamilton County, Ohio, be, and the same is hereby, reversed and held for naught, and that as to these counts only each defendant [fol. 270] is hereby ordered discharged as to the counts against him.

Costs on this appeal to await the final determination of the cause.

As to the affirmance of the judgment of the Court of Common Pleas, appellants, by counsel, do hereby object.

As to the reversal of the judgment of the Court of Common Pleas, appellee, by counsel, objects.

Cause is hereby remanded to the Court of Common Pleas for Execution.

Defendants having indicated an intention to appeal, the bonds heretofore given in each case is continued until final disposition of each appeal.

/s/ C. Watson Hover, Prosecuting Attorney, /s/ Carl B. Rubin, Ass't. Prosecuting Attorney, Attorneys for Plaintiff-Appellee.

/s/ Louis C. Capelle, /s/ Morse Johnson, /s/ Milton H. Schmidt, /s/ Chester R. Shook, Attorneys for Defendants-Appellants.

[fol. 271]

IN THE COURT OF APPEALS, FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, No. 7856

STATE OF OHIO, Plaintiff-Appellee,

vs.

TALMADGE RALEY, JOSEPH STERN, and EMMETT CALVIN BROWN, Defendants-Appellants.

OPINION—November 15, 1954

Appeal on Questions of Law, From Court of Common Pleas, Hamilton County, Ohio.

Mr. C. Watson Hover and Mr. Carl B. Rubin, for Plaintiff-Appellee,

Mr. Louis C. Capelle, Mr. Morse Johnson, Mr. Milton H. Schmidt, and Mr. Chester R. Shook, for Defendants-Appellants.

[fol. 272] Hamilton County, No. 7856

Matthews, P. J.

The defendants-appellants were indicted separately for contempt of the Un-American Activities Commission created and organized in accordance with the provisions of Section 76-28 to 76-35, both inclusive, of the General Code (R.C. 103.31 to 103.38, both inclusive) as supplemented by the Act of the General Assembly passed on the 1st day of June, 1951. By agreement, the cases were consolidated for trial in the Common Pleas Court. By entry of Court, on agreement of counsel, they have been consolidated for the purpose of this appeal.

Hereafter, the defendants-appellants will be referred to as the defendants, and the plaintiff-appellee as the State.

The contempt charged is that the defendants, after having been duly sworn as witnesses before a duly constituted session of the Un-American Activities Commission, refused to testify in response to certain questions propounded to them.

It is charged that defendant Stern refused to answer two questions, defendant Brown four questions, and defendant Raley sixteen questions. Each refusal was charged as a separate offense.

The defendants waived their right to a jury and elected to be tried by a Judge of the Court in which the indictments were pending.

After motions to quash, pleas in abatement and demurrers had been overruled, the trial proceeded, and at its conclusion the Court found the defendants guilty as charged and sentenced each to imprisonment in jail for ten days and to pay a fine of $500.00 on each count, the prison sentences, [fol. 273] however, running concurrently and the fines, other than the first one, being remitted.

The motions to quash, the pleas in abatement and the demurrers raised substantially the same questions. They attacked the constitutionality of R. C. 103.31, et seq., under which the Un-American Activities Commission assumed to act, denied the legal existence of such commission, and then assailed the right of the Commission generally, and, in particular, to require the defendants to answer the questions upon which the indictments were based against the defendants' claims of privilege from answering under Article I, section 10 of the Constitution of Ohio, and the 14th Amendment of the Constitution of the United States.

That the General Assembly, both by implication from the grant of power to legislate, and by express constitutional grant (Art. I, sec. 8) has power to "obtain through committees or otherwise, information affecting legislative action under consideration or in contemplation is too clear for debate. And when the enabling act is in the form of a law, approved by the Governor, or passed over his veto, and the subject matter about which the information is sought comes within the legislative power of the State, its validity is doubly clear.

Of course, where the enabling act provides for the appointment by the General Assembly of a committee or commission composed of its members, the authority of the members of such committee or commission would necessarily expire on the termination of their legislative term.

The General Assembly is denied appointive power by the [fol. 274] Constitution except in a few specified exceptions. (Art. II, Sec. 27). One of the exceptions is the power given it to appoint its own officers, including, of course, committees of its own members, but, as already stated, these appointments can not be for a longer life than that of the appointing power. The qualification to serve on the committee or commission is conditioned upon continued membership in the General Assembly.

It is claimed that as the General Assembly had adjourned sine die before the hearing at which the defendants were questioned, the authority of the Commission had expired. We do not think that is the test of the duration of the Commission's authority. We are of the opinion that the Commission's life was limited only by the length of the term for which its members were elected to the General Assembly, subject, of course, to the repeal of the law in the meantime. We are also of the opinion that the law does purport to confer authority beyond the adjournment sine die of the General Assembly, but does not assume to confer any authority beyond the term for which they were elected. It is true that the law requires the filing of its entire file with the clerk of the Senate on January 1st, 1953, and the filing of its report and recommendations with the 100th General Assembly and the Governor on that date; but that was no more than a winding up of its affairs and the delivery of the State's property in its possession to the designated State officials. It's little, if any, more than would [fol. 275] be implied as a duty on expiration of the term to surrender the office and its accessories to the successor or official entitled.

It should be noted that this Commission is created by a law as distinguished from a legislative resolution. This law authorizes it to report from time to time to the General Assembly, to the people and to the Governor, and that it should complete its work so that it could make its final report on January 1st, 1953, and that this final report should be made not only to the 100th General Assembly, but also to the Governor, which would be during the term of the Governor who approved the law. The fact that this Com-

mission was created by law expressly provided for its continuance after adjournment, distinguishes this case from the cases relied on by the defendants. We assume that the power of the appointment to the committee of members of the legislature would expire at the end of their legislative terms except for the purpose of winding up the affairs of the committee by delivering its file to the proper custodian.

In 81 Corpus Juris Secundum, at 958 and 959, it is said: "While legislative committees, in the absence of special authority, can act only while the legislature is in session, it is within the power of the legislature *as a whole,* in the absence of constitutional restriction, to appoint committees to sit after adjournment, or during a recess." In the text at page 959, it is also said: "Generally, neither branch of the legislature may, by independent action, create an investigat-[fol. 276] ing committee with power to sit after adjournment of the legislature, and, in order to continue or appoint a committee whose work of investigation is to proceed after the adjournment of the body which created it, the enactment of a law by bill passed in the manner prescribed by the constitution, is required in some jurisdictions."

See, also: Swing v. Riley, 90 Pac. (2d) 313.

A law, of course, continues operative indefinitely, or until it expires by express limitation or repeal. A resolution by one branch of the legislature, or even by both, differs from a law in this respect. This distinction represents the difference between the authorities relied on by counsel for defendants and the case at bar.

Defendants' counsel relies on State, ex rel. v. Gayman, 11 C. C. (N.S.) 257, (affirmed without report in 79 Ohio St., 444), and Opinion of Attorney General of 1935 #4557, at page 1041. We believe they are inapplicable. In both instances, the question related to the power after adjournment (sic) sine die of committees appointed by resolution of either one or both houses. Neither related to a committee appointed in pursuance to the terms of a law, as in the case at bar.

So we conclude that the adjournment sine die of the General Assembly had no effect upon the power of the Un-

American Activities Commission created by the joint action of all branches of the law making agencies of the State.

But it is asserted that the act of the legislature creating the Un-American Activities Commission invaded a field of [fol. 277] government in which the United States government has paramount authority under the Constitution of the United States and that the United States had already rightfully occupied the field by the enactment of the so-called Smith Act, and, perhaps, other laws, and that it authorizes investigations not exclusively for the purposes of the General Assembly, but for other purposes, including agencies of the United States Government.

To properly discuss this assertion, it is necessary to set forth section 76-31, G. C., in which power was conferred upon the Commission. That section provides:

"The commission shall have the power and duty

(1) To investigate, study and analyze

(a) all facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective the overthrow or reform of our constitional (sic) government by fraud, force, violence, or other unlawful means;

(b) all facts concerning persons, groups and organizations, known to be or suspected of being dominated by, or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to national defense, the safety and security of this state, the functioning of any agency of the state or national government or the industrial potential of this state;

(c) the operation and effect of the laws of this state, of the several other states, and of the United States, which [fol. 278] purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(2) To maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter

or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same.

In addition thereto the commission shall have such additional rights, duties and powers as may be necessary to enable it fully to exercise those specifically set forth herein and to accomplish its lawful objectives and purposes."

In the first place it is contended by defendants' counsel that this law attempts to confer power to invade the national domain. They point out that the Un-American Activities Commission is authorized by this law to investigate, study and analyze all activities having as their objective the overthrow or reform "of our constitutional *governments* by fraud, force, violence, or other unlawful means;" also activities which might adversely affect Ohio's contribution to the national defense, the safety of the State, the functioning of any agency of the State or National government; also the operation and effect of the laws of this and other States, and of the United States on the subject, and to maintain a liaison with agencies for the purpose of devising means of disclosing persons and groups who seek to overthrow the government of either the United States or this State by force and violence. The purpose is stated to [fol. 279] be to furnish the basis for recommending such additional legislation as might be found advisable and necessary.

It is said that sedition and treason against the United States are matters within the jurisdiction of the United States, and beyond the jurisdiction of the individual states. We think it is also implied that there is no such thing as sedition or treason against an individual state. We cannot agree with either of these claims. Sedition and treason against the United States as a sovereign entity are necessarily offenses also against every sovereign State of the Federal Union. Their relation to one another is fixed by the United States Constitution, which, by its terms, makes the United States Government within its domain paramount. However, it leaves the States paramount sovereigns in all governmental matters not transferred to the United States government. It does not create hostile sovereignties, or sovereignties joined together in a loose confederacy. It

creates "an indestructible Union, composed of indestructible States." While each should be on guard to protect its own domain, it should be equally on guard to see that the others should be secure in their respective domains.

The United States Constitution contains many provisions emphasizing the spirit of friendship, cooperation and comity that it created among the States. And many laws by the United States as well as by the individual States have been passed to implement this spirit of cooperation for the common good. Speaking of this spirit of comity, Chief Justice Taft said in Ponzi v. Fessenden, et al., 258 U. S., 254, at 259, that:

"We live in the jurisdiction of two sovereignties, each [fol. 280] having its own system of courts to declare and enforce its laws in common territory. It would be impossible for such courts to fulfil their respective functions without embarrassing conflict unless rules were adopted by them to avoid it. The people for whose benefit these two systems are maintained are deeply interestated that each system shall be effective and unhindered in its vindication of its laws."

It is said that assuming that it is appropriate for state governments to cooperate with other states of the United States without surrendering any of their sovereign powers, that this cooperation cannot be accomplished through their legislative department. That, it seems to us, depends on the nature of the subject matter and purpose of the cooperation. If the subject matter is legislation, and the purpose is to provide information as a base for legislation, it is entirely appropriate for the State to be represented in the cooperative effort. And that was the purpose of the cooperation proposed by this legislation. On the basis of their investigation the Commission was charged with the duty of recommending such additional laws as it might deem necessary or advisable.

That sedition and treason are proper subjects of state action, there can be no doubt. This is recognized in Section 2 of Art. IV of the United States Constitution, wherein it is provided that "A person charged in any state with Treason, Felony or other Crime who shall flee from Justice

and be found in another State" shall, upon demand, be [fol. 281] delivered up by the executive of the state in which the traitor is found. While treason against the United States is necessarily treason against every state as well, the reverse of that is not true. Treason against a state is not necessarily treason against the United States. There have not been many recent instances of trials for treason or sedition against an individual state of the United States, but there were frequent instances in the early history of this Country. The most renowned one was the trial and conviction of Thomas W. Dorr by the Court of the State of Rhode Island, about 1841. When Rhode Island declared its independence of Great Britian (sic) and became one of the United States, it chose to continue the Charter granted to it by Charles II in 1660, as its fundamental law. One of its provisions limited the right to vote to those owning property of a substantial amount. The charter contained no provision for its amendment. Dorr and his followers agitated for a new constitution containing a broadening of the base of franchise. The established government refused to take any action to call a constitutional convention. This led to violence and Dorr and his associates called a popular convention which adopted a constitution for the State and then made an unsuccessful attempt to seize the state arsenal. This became known as Dorr's Rebellion. After the rebellion was put down, Dorr was indicted for treason in the state court, found guilty, and sentenced to life inprisonment. (sic) An effort was made to invoke the jurisdiction of the United States Supreme Court to review his conviction, but the effort failed. In Re Dorr, 3 How. [fol. 282] (U.S.) 103. Neither in that case nor the subsequent case of Luther v. Borden, 7 How. (U.S.) 1, growing out of the same rebellion, did the Supreme Court say or intimate that Rhode Island had acted beyond its jurisdiction.

In 52 Am. Jur., 8001, it is said: "Treason by levying war against a state has been held not necessarily treason against the Federal Government; but if the intention is to subvert the State Government, and then withdraw it from the Union, this would constitute levying war against the United States."

Counsel relies on the recent case of Commonwealth v. Nelson, 377 Pa. 58, 104 Atl. (2d) 133, which held that as Congress had passed the Smith Act on the subject of sedition, it had thereby impliedly preempted the field and excluded the State from legislating on the same subject. Consequently, it declared the Pennsylvania Sedition Act was suspended. In reaching this conclusion, the Court relied strongly upon Hines v. Davidowitz, 312 U. S. 52, in which the Supreme Court declared the Pennsylvania Alien Registration Act unconstitutional. One of the judges in Commonwealth v. Nelson, supra, dissented and pointed out the difference between the grant of power over external affairs by the United States Constitution, and the grant of power over internal affairs. In external affairs there is no competing sovereignty with which power must be divided, whereas, in internal affairs, all power, not granted, is reserved to the States or the people thereof. At page 154 of 104 (2d) Atl. Repporter, (sic) the dissenting judge [fol. 283] said: "A reading of the majority opinion (Hines v. Davidowitz) makes it clear that the basis for the decision was the Court's conviction that a State Alien Registration Act would likely involve us in grave international controversies and might even lead to war. No such result could possibly ensue from state treason or sedition laws."

The authority of Commonwealth v. Nelson, supra, is weakened by the fact that since the case at bar was submitted the Supreme Court of the United States in response to the petition of the Attorney Generals of twenty-five states has granted a writ of certiorare (sic) and the case is now pending in that court for review.

Furthermore, we do not think Commonwealth v. Nelson, supra, is applicable in any way to the facts of this case. That case involved the State's sedition act—a penal act—defining a crime and prescribing punishment. We are not confronted with a penal statute in the case at bar. The statute here under consideration is not primarily a penal statute of any sort. It is a law creating a legislative commission with power to investigate and make a report of its findings and conclusions on subjects coming within the reserved power of the state.

Next, it is urged that the act attempts to confer judicial power upon the Un-American Activities Commission, in that it authorizes cooperation or liaison with all departments of government, both State and Federal, and confers judicial power in the provision relating to contempt. It is also pointed out that the proceeding by indictment is not [fol. 284] authorized by the law.

We find there is no attempt to confer judicial power upon the Un-American Activities Commission. None of the powers referred to is exclusively judicial.

The fact that the legislature referred to existing statutes on the subject of contempt in specifying what acts were punishable as contempts does not confer judicial power notwithstanding the statutes referred to deal with contempt of courts. Furthermore, we are not required in this case to refer to Section 12137, General Code, for the reason that Section 76-32, R. C., expressly and specifically makes "refusal of any person or officer to testify" a contempt of the Commission.

Nor do we think the provision invalid that directs that contempt proceedings should be in accordance with Sections 12138 to 12146, General Code. Those sections provide for a written charge, an entry thereof on the journal, opportunity to be heard in person or by counsel and a trial before the court with opportunity to make any defense the accused may have. All this was accorded the defendants. The fact that the charge took the form of an indictment, it seems to us, is immaterial. Instead of omitting anything designed to protect the accused, it gave them a mantle of protection to which, perhaps, they were not entitled. Undoubtedly, contempt of the Un-American Activities Commission is an affront to the dignity of the State of Ohio, punishable by a fine of not more than $500.00, or imprisonment of not more than 10 days, or both. G. C., 12142. It is, therefore, a misdemeanor. By section 13437-34, G. C., misdemeanors may be prosecuted or information sworn to [fol. 285] by the Prosecuting Attorney, but that is permissive, and the prosecution may be instituted by indictment.

On this phase of the case, it is our conclusion that the law creating the Un-American Activities Commission is a constitutional exercise of power by the legislature and that

the power conferred upon it had not expired at the time it held its meetings at which the defendants were called upon to testify.

Perhaps we should notice the contention that the defendants would not be in contempt in any event, because they were not ordered to answer after their claim of privilege. It seems to us that the wording of section 76-32, R. C., is sufficient answer to this contention. It expressly makes "refusal" to answer any question on any subject concerning which he "may be lawfully interrogated" a contempt. The observance of no particular ritual must be pursued in order to place the witness in contempt. The only requirement is that it be made to appear that he knowingly, deliberately and with full knowledge of the consequences refused to testify. The question is whether this record shows a deliberate refusal with full knowledge of the consequences.

But it is urged that the defendants were excused from answering by the constitutional provisions—state and Federal—providing that no person shall be required to be a witness against himself in any criminal case or required to testify before any governmental tribunal to any matter that might tend to incriminate him. That claim requires an examination of the question propounded in the light of [fol. 286] all the surrounding circumstances. And what were the circumstances? The only significant circumstance was that the Un-American Activities Commission was created to ascertain whether there existed in Ohio any evidence of treason, sedition or any other acts having for their object the subversion of government by force and violence, and thereafter to report what it had found with its recommendations as to what, if any, legislation was necessary or advisable. A witness called before it would naturally take cognizance of that purpose. Such a person would have no right, however, to conclude that the purpose of the Commission was to entrap him into confessing a crime or into giving evidence, having a tendency to incriminate him and to act as though that was the purpose. It was not a grand jury seeking evidence upon which to base an indictment. Properly viewed, it presents the aspect of an impersonal inquiry to elicit facts as to the actual state

of the social order and not to secure evidence to support a predetermined conclusion, or to discreit (sic) anyone.

And in determining whether the claim of privilege was justified, we must bear in mind that the mere claim of privilege cannot be regarded as a defiance of the law or the Commission, and it must also be remembered that at the time of this hearing mere membership in the Communist Party had not been made a crime either by the State of Ohio or by the United States of America. The Communist Party had not been outlawed. However, the Smith Act [fol. 287] of Congress, making sedition a crime, and the Ohio statute making syndicalism, that is, advocacy of force, violence and terrorism, as a means of effecting political or economic change, a crime, were in force.

Before considering the claim of privilege from testifying under the provisions of the Vth Amendment of the Constitution of the United States and section 10 of Article I of the Constitution of Ohio, it is necessary to revert to the contention of appellants that after they claimed the privilege they were not ordered to answer and that until there is a refusal to testify, after ordered to do so, no contempt has been shown, or, at least, it is asserted that the Commission appeared to accept the claim of privilege, and that the mere claim of privilege cannot be used as a basis for contempt, and that that is all this record shows.

We agree that the record must show contumacious conduct on the part of the witness, but we do not agree that the law requires that state of wilful resistance to be disclosed by an exclusive ritual.

The United States Court of Appeals, District of Columbia Circuit has made an exhaustive study of this question in three cases pending before it at the same time. There were lengthy principal, concurring and dissenting opinions in each case, but upon this question with which we are concerned there was no disagreement as to the correct rule. [fol. 288] The disagreement related to its application to the facts and to other questions foreign to our problem.

In Quinn v. United States, 203 Fed. (2d) 20, Quinn was asked whether he was or ever had been a member of the Communist Party, to which, instead of making a direct answer, he referred to a statement made by a former wit-

ness and stated that he took the same position. There was a question of whether the statement of the former witness was an adequate claim of privilege, but upon the question of the duty of the tribunal upon an assertion of the constitutional right to refuse to testify to incriminating circumstances, the Court, in a concurring opinion, at 33, said:

"Although there is no talismanic formula which the Committee must use in directing the witness to answer, I would state the principle this way: It must appear from all the circumstances that (1) the witness was clearly apprised, and not left to the risk of guessing under pain of criminal penalties, whether the grounds for his objection to answering were accepted or rejected, and that (2) if rejected, he was given another opportunity to answer. Under this view the Committee would necessarily have to inform the witness in time to allow opportunity for answering. I think it implicit in Bart that the ruling must be that of the inquiring authority (the Committee here). The Court there says that '(i)f the actual questioner be counsel instead of the inquiring authority, or a member of it, the attitude * * * of that authority may be made clear by prior announcement or by acquiescence or ratification. That phase of the matter must be determined from the circum-[fol. 289] stances.' I take this to mean that it must clearly appear to a reasonable person in the position of the witness that the ruling is, in fact, that of the inquiring authority or its duty authorized presiding member acting on its behalf."

In Bart v. United States, 203 Fed. (2d) 47, Bart was indicted for refusal to state what his name was when he came to the United States, what his father's name was, under what name his father became a citizen of the United States, and what his father's name was before he changed it. The basis of the refusal to answer was that the questions were not pertinent to the inquiry that the Congressional Un-American Activities Committee was authorized to conduct, but that ground was abandoned upon oral argument to the court and reliance placed upon the claim that Bart was not in contempt because the Commission had not ordered him

to answer. The Court rejected this contention, saying at page 48 that:

"We have held in Emspak v. United States, 91 U. S. App. D.C. 378, 203 Fed. (2d) 54, decided today, that there is no requirement that a specific direction to answer be given after a refusal to answer. Emspak's contention was directed to the necessity for a specific direction to answer after an asserted claim of the privilege against self-incrimination. It was clear upon the record, certainly as to some of the questions, that Emspak was made indisputably aware of the attitude of the Subcommittee toward his refusals and his grounds for the refusals; indeed his counsel made no contrary contention in that respect. In the present case the basic problem recurs in a different framework. For [fol. 290] that reason we add to the discussion in the Emspak case."

Now in Emspak v. U. S., 203 Fed. (2d) 54, referred to above, four of the Judges speaking through Clark, J., held that Emspak had not claimed the 5th Amendment as a shield in his refusal to answer, but, conversely, that his refusal to answer was his method of protecting the integrity of that amendment. Other Judges, speaking through Prettyman, Circuit Judge, did not rely upon that interpretation of Emspak's language. They assumed that he had claimed his privilege against incrimination. At page 60, they said:

"In respect to the applicable requirements upon a witness's refusal to answer a question, we add one further observation in view of the decision and opinion in Quinn v. United States, 91 U. S. App.D.C. 344, 203 F. 2d 20, decided today. We there remand, we here affirm. But we remand there because the trial court erroneously, we think, held specifically that the defense offered by Quinn was not available to him as a matter of law. Reversal upon that ruling required a new trial. We made further observations designed to be helpful upon the trial thus required. In the present case there was no corresponding ruling of law. There was a general judgment of guilty by the judge without a jury. Our review upon the point is limited to a determination whether the record contains sufficient evidence to

support a finding that Emspak deliberately and intention-
[fol. 291] ally refused to answer and thus to support that judgment. We find that it does. The evidence is ample that Emspak was made well aware that the Subcommittee desired answers to its questions despite the grounds he advanced for refusing. Hence we affirm."

This issue requires an examination of this record to determine what it shows upon the subject of whether it was made clear to each defendant that the Un-American Activities Commission required an answer, notwithstanding the claim of privilege. We will consider the record as to defendant Raley in the first place.

The record shows that in response to a subpoena, Raley appeared with his attorney, who identified himself and proffered and was allowed to file a nine page brief or protest on behalf of defendants Talmadge Raley, Joseph Stern and Renel Stanfield, all members of the United Electrical, Radio and Machine Workers of America, in which the legal existence of the Un-American Activities Commission was challenged and all of its activities declared to be without authority of law and null and void. However, expressly reserving their rights, they consented to testify, but did not waive the privilege to claim exemption from self-incrimination. Raley, having been sworn, took the stand. According to defendants' brief, he was asked about 209 questions. He answered 76 and asserted his privilege of declining to answer 133. For the most part, his examination was conducted by counsel for the Commission. The questions which he answered disclosed that he was a native of Kentucky, had been a resident of Ohio for 31 years, had attended grammer (sic) school, and later attended Miller's Business Col-
[fol. 292] lege at night for a short time and received instruction in the technical training school while serving for about two years in the United States Air Force, that he had had various employments, became a member of United Electrical Radio & Machine Workers' Union, and later became business agent for a local and organizer for the union. It also disclosed that he had been a witness before a Committee of Congress and had at that time exercised his privilege of refusing to answer self-incriminating questions. There

is no doubt that he knew and was keenly aware of his rights in that respect. His examination shows he was on guard at all times.

In the first count of the indictment, Raley is charged with refusal to answer the following question:

"Q. Now, Mr. Raley, as an official of the United Electrical Workers, is there any concern among the officials of the possible presence of Communist Party Members among the leadership of the UE?"

This question was asked by counsel for the Commission and the defendant in response said:

"A. I must assert the privilege of the Fifth Amendment of the Constitution and Article I, Section 10, of the Ohio Constitution, and refuse to answer."

Neither the chairman nor any other member of the Commission indicated in any way that an answer was insisted upon. Under such circumstances, we cannot say that there is proof that Raley was a contumacious witness in this respect. We hold that the court erred in finding him guilty on this count.

[fol. 293] In the second count, Raley is charged with refusal to answer this question: "Now as a matter of fact Victor Decavitch was formerly district president of the UE, was he not?" This question was asked by counsel for the Commission, to which Raley responded by saying: "Again, I have to assert my privilege under the Fifth Amendment to the United States Constitution, and Article I, Section 10 of the Constitution of the State of Ohio." Thereupon, the Chairman of the Commission proceeded to question him concerning the basis of his belief as to how any answer could incriminate him, but the witness claimed the privilege and refused to answer any such questions. Finally, the Chairman of the Commission asked: "You refuse to answer the question?" and Raley responded: "On the basis of my privilege as granted by those documents." This situation suggests two questions— Was the refusal to answer a knowingly and deliberate refusal to answer the Chairman and could any conceivable responsive answer have any possible tendency to incriminate the witness?

As to the first question, we are of the opinion that the witness understood that the Commission insisted upon an answer, notwithstanding his claim of privilege and that the refusal was deliberate and with full knowledge of the consequences. We are also of the opinion that Raley's knowledge that Decavitch had been district president of UE could have no possible tendency to incriminate Raley. It is not suggested that mere membership in the UE or holding a position or office in it was unlawful. The most that is conceivable is that it might furnish the opportunity for the commission of some crime. For greater reason, mere knowledge that Decavitch had held an office in that organization [fol. 294] could have no tendency to prove the commission of any crime by the person having such knowledge. If the claim of privilege should be given such a broad application, it would cease to be a limited privilege from testifying in certain respects and become an absolute and complete exemption from taking the witness stand. Interrogation would be futile.

In 58 Am. Jur., 57 (sections 59 and 60), it is said:

"Questions as to a witness' presence are deemed merely as preliminary, unless the place mentioned in the question is a public nuisance, and do not entitle the witness to exercise the privilege of silence. So also, a witness may be required to answer a question whether he saw the commission of a crime, which does not involve his connection with the acts done, or require him to divulge why he saw the crime, if he did see it. It is ruled in some jurisdictions that a party engaged in an unlawful transaction cannot be compelled to disclose the names of others concerned therein, while elsewhere, under similar circumstances, a directly opposite conclusion is reached.

"Statements by a witness concerning a fact which is not a part of a criminal transaction, but is material in a prosecution based on such a transaction, as giving his name, declaring his presence in some locality remote from the scene of crime, or stating whether he was, in fact, a public official at the time it is claimed the offense was committed, do not in themselves constitute incriminating statements tending to show him guilty of crime, although on a prosecution for some offense it may develop that they are material."

[fol. 295] We hold that the trial court did not err in finding Raley guilty on this charge.

In the third count, Raley was charged with refusal to answer this question: "Now as a matter of fact that was the headquarters of Local 766 of the UE at that time; isn't that correct?" The record shows that after his refusal to answer this question, asked by the Commission's counsel, on the ground of privilege, the Chairman of the Commission asked him how an answer to that question could possibly tend to incriminate him, and he again refused to answer, asserting his privilege. Thereupon, the Chairman said: "I, nevertheless, request an answer." Raley, after consulting his counsel again refused to answer. So it seems to us that his refusal was deliberate and with full knowledge. We are further of the opinion that knowledge of the place where the headquarters were could have no tendency to incriminate. If membership in that union was not a crime, mere knowledge of certain facts concerning its activities could not be regarded as an element of any conceivable crime.

We are of the opinion that the court did not err in finding the defendant guilty on this count of the indictment.

What we have said concerning the first count is equally applicable to the fourth count. There was nothing indicating that the Commission demanded an answer to the question propounded by its counsel. We are, therefore, of the opinion that the Court erred in finding Raley guilty on this count.

In the fifth, sixth, and seventh counts, Raley was charged [fol. 296] with refusal to answer whether he knew Herbert Hirschberg, Joseph Sheets, and John Thomas. The record shows that counsel for the Commission asked these questions, and that neither the Chairman nor any member of the Commission indicated in any way that an answer was expected. We, therefore, hold the Court erred in finding Raley guilty on these charges.

In the eighth count, Raley was charged with contempt in refusing to answer this question: "As a matter of fact every one of these individuals are leaders of UE or were leaders of UE at that time, were they not, Mr. Raley?"

The individuals referred to were Hirschberg, Shetts, and Thomas. In our opinion the proof was deficient in the same respect as we have found it to be in connection with the fifth, sixth, and seventh counts. For that reason, we find that the Court erred in finding Raley guilty on this count.

By the ninth count, Raley was charged with contempt in refusing to answer this question: "Let me refer to an article carried in the Cincinnati Post on September 13th, 1949, headed 'Schools Trace Communist Propaganda. Union Agent Denies Kits Are Leftist' and refers to an interview with you. Do you recall that interview?" The record shows that after his refusal to answer, the Chairman of the Commission informed Raley that the Commission expected an answer, and that it was his opinion that there was no valid ground for his refusal. Raley consulted his counsel, who expressed a contrary opinion, which Raley chose to follow. We think this is an instance of a deliberate defiance of the Commission with full knowledge. The question remains whether any conceivable responsive [fol. 297] answer would tend in any way to incriminate the witness. We are of the opinion that it would not.

Refusal to answer questions as to whether he knew Jerome Joseph, Victor Pasche, Herbert Siens, Marie Reed Haug, or Paul Shepherd furnished the basis for the charge of contempt in the tenth, eleventh, twelfth, thirteenth, and fourteenth counts of the indictment.

These questions were asked by a member of the Commission, so that in our opinion the Commission must be considered as expecting and demanding answers thereto. And, for the reasons already stated, we are of the opinion that mere knowing one or more or all of these named men cannot be regarded as having any tendency to incriminate.

For these reasons, we are of the opinion that the court did not err in finding the defendant Raley guilty as charged in those counts.

And for the same reasons, the court is of the opinion that the court did not err in finding the defendant guilty on the fifteenth count, charging him with refusal to answer whether all of the aforesaid persons were not prominent members of the UE in Cleveland, Ohio.

In the sixteenth count Raley was charged with contempt in refusing to answer this question propounded by a member of the Commission: "Who has a similar—holds your position in the Cleveland area at the present time with the Union?"

For the reasons already given, we are of the opinion that [fol. 298] an answer was required to this question and that the claim of privilege from self-incrimination was no protection.

We, therefore, affirm the judgment against Raley on the Second, Third, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth & Sixteenth Counts, and reverse the judgment as to the other counts.

We will now consider the record as it relates to Joseph Stern. He was asked one hundred and five questions and refused to answer sixty. He was indicted for refusal to answer two.

In the first count, he was charged with refusal to answer this question: "Where do you reside, Mr. Stern?" This question was propounded by counsel for the Commission, and after the witness refused to answer the Chairman, at the request of said counsel, ordered the witness to answer. So that unless the claim of privilege is valid, the deliberate refusal to obey the order must be held to be a contempt. The question remains as to whether any reasonable person could conclude that any conceivable responsive answer would tend to incriminate the witness. It is admitted that under ordinary circumstances residence would not be regarded as containing any suggestion of a crime or any element thereof; still it is contended that later questions disclosed that the questioner's purpose eventually was to prove that a Communist meeting was held at the residence of the defendant and that he was present.

[fol. 299] We believe counsel fail to distinguish between the elements of crime and opportunity to commit crime. There is no suggestion that the defendant's residence at a particular place would be an element in any crime with which he might be charged. Even proof of his presence at a particular place would at most be evidence only of opportunity to commit the crime. It should be observed

that at that time membership in the Communist Party had not been made a crime.

We are of opinion that the trial court did not err in finding Stern guilty as charged in the first count of the indictment.

In the second count Stern was charged with refusal to answer this question: "I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this county?" This question was asked by counsel for the Commission and there is nothing to indicate that the Commission required an answer.

We, therefore, conclude that the Court erred in finding the defendant guilty on this charge.

Turning now to the charges against the defendant Emmett Calvin Brown, we find that in the first count he is indicated (sic) for refusing to answer the following question: "And what has been your educational background?"

The defendant did not invoke the Constitution of the United States or the 10th section of Article I of the Constitution of the State of Ohio as the basis for his refusal to answer this question. The ground of his refusal was: "I just don't think it is your business." He was told by the Chair-[fol. 300] man that the Commission would decide that question and then proceeded to ask: "Do I understand, for the record, you are refusing to answer the question because you feel it is not our business?" to which the defendant responded: "The answer is the same."

It seems to us that the defendant as a person of average intelligence, which he was, would understand from the remarks of the Chairman that he approved of the question propounded by counsel for the Commission and expected the defendant to answer it. By not basing his refusal to answer on exemption from self-incrimination, he waived that ground and his right must be judged by the ground assigned by him. As to that ground we hold that it was relevant to the purpose for which the Un-American Activities Commission was created, and, therefore, was not a valid ground for refusal to answer. If the privilege against self-incrimination had been assigned, it would not have availed as a shield. It seems to us that the question is no more than one of the customary questions asked of wit-

nesses for the purpose of developing facts so that the trier of the facts could determine what credibility to attach to his testimony and not for any other purpose. We are of the opinion that the answer was relevant to the investigation which the Un-American Activities Commission was authorized to conduct. Until the general environment and qualifications of the witness had been established there would be no adequate basis upon which to determine the credit to be attached to the witness' testimony. We find that the court did not err in finding the defendant guilty on this count.

In the second count Brown was charged with contempt in refusing to answer: "Mr. Brown, were you ever employed by the Fisher Body plant at Norwood, Ohio?", and in the third count in refusing to answer: "Is there anything about [fol. 301] being employed at that plant which might tend to incriminate you?"

These questions were propounded by the Chairman of the Commission.

We are of the opinion that the answer would have no tendency to incriminate, and, therefore, the Court did not err in finding Brown guilty on both of these counts.

The fourth count is based on a question of the Chairman of the Commission. He asked: "Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the ballot in that election?" In answer to this question Brown said: "I invoke the privilege of the Fifth Amendment."

We fail to see in what respect the Fifth Amendment in and of itself furnishes any shield to the defendant. The Fifth Amendment is a limitation on the power of the government of the United States alone. We do not stop to consider what of its provisions are incorporated in the Fourteenth Amendment which is a limitation on the power of the States, because we are of the opinion that there is no provision in either the Constitution of the United States or of the State of Ohio that would be applicable to this situation, for the reason that any answer that would be given could disclose nothing other than the right of every citizen to participate in public affairs.

The contention suggests that open political activity is, of itself, something concerning which no inquiry is permitted, and that this sanctity somehow flows from the [fol. 302] secret ballot law. There is no doubt that the law insures to the citizen the right to mark his ballot, without molestation, in the secrecy of the voting booth, and that he shall not be questioned concerning how he voted, but it is an entirely different thing to openly engage in political activities outside of the voting booth. There is no more exemption from investigation of that activity than any other.

We find the Court did not err in finding Brown guilty on this count.

It was claimed by the State that the defendants had no occasion to claim the right to refrain from giving incriminating testimony, because of the immunity from prosecution granted by Section 60, G. C. R. C. 101.44. It is true that it is enacted by that section that the testimony given before a *committee* of the General Assembly should not be used in any criminal prosecution against the witness and that he could not be prosecuted on account of any transaction or matter concerning which he testifies. We have already indicated that in our opinion that because the members of this Commission were also members of the General Assembly, their terms as members of the Commission expired when their terms in the General Assembly expired. It is also true that the purpose of the Commission was to collect fact to furnish a basis for legislation, and only incidentally were the fruits of its investigation available to the other departments of the government. The authority and power of the Commission was based on a [fol. 303] law and not merely on a resolution of the General Assembly. The immunity section (R. C. 101.44) by its terms is limited to testimony given before a committee or subcommittee of the General Assembly. However, we are of the opinion that the Commission must be regarded as a legislative investigating body, notwithstanding its name and the manner of its creation. We are, therefore, of the opinion that section 101.44, R. C. (G. C. 60) is applicable to proceedings before the Commission and confers immunity to the limits of the State's power. The fact that

the immunity would be no shield from prosecution by other sovereignties, such as, another state or the United States is no valid objection to the operation of the immunity within the sovereignty granting it. 58 Am. Jur. 75.

It is also urged that Sec. 101.44, R. C., must be read in relation to Sec. 101.41, R. C., and that so read the Un-American Activities Commission does not come within its terms inasmuch as it is neither a standing nor a select committee. We do not stop to consider whether it could be brought within the definition of those terms for the reason that the two sections relate to entirely different matters and section 101.44 contains no such limitation, and, therefore, the terms of one cannot be used to limit the terms of the other.

It is also urged that the defendants were misled by the assurances of the Chairman of the Commission that they had the right to claim the privilege of refusing to give self-incriminatory testimony. We fail to see how the defendants could have been misled by such assurance into surrendering a right, if, as a matter of law, they had no [fol. 304] right to surrender.

Without resort to the immunity extended by Section 101.44, R. C., we have found that each of the defendants were properly convicted on one or more counts. However, even assuming the applicability of the immunity statute, the State still had the burden of proving that the refusal to answer was the deliberate act of the defendant, with knowledge of the consequences, in order to give the act the character of contumacy essential to a conviction for contempt.

For these reasons, the conviction of *Talmadge Raley* is affirmed on the 2nd, 3rd, 9th, 10th, 11th, 12th, 13th, 14th, 15th and 16th, counts and reversed as to all other counts; as to *Joseph Stern,* the conviction is affirmed as to the First Count, and reversed as to all other counts; and, as to *Emmett Calvin Brown,* the conviction is affirmed as to the all Counts.

Matthews, P. J., & Hildebrant, J., Concur.

Ross, J., Concurs as to all affirmances, but dissents from all reversals.

[fol. 305]

IN THE SUPREME COURT OF OHIO, JANUARY TERM, 1955

Case No. 34361

Action

Appeal from the Court of Appeals of Hamilton County.

Motion for an Order Directing the Court of Appeals of Hamilton County to Certify Its Record.

STATE OF OHIO, Plaintiff-Appellee,

v.

TALMADGE RALEY, JOSEPH STERN and EMMETT CALVIN BROWN, Defendants-Appellants.

Attorneys:

C. Watson Hover, Carl Rubin, Court House, Cincinnati, Ohio.

Louis C. Cappelle, Keith Building; Morse Johnson, Dixie Terminal Building; Milton H. Schmidt, Atlas National Bank Building; Chester R. Shook, Keith Building, Cincinnati, Ohio.

MEMORANDA OF PLEADINGS, &C., FILED, WRITS ISSUED, &C., JUDGMENTS, ORDERS AND DECREES

DOCKET ENTRIES

DATE	
February 8, 1955	Notice of Appeal and proof of service filed.
February 17, 1955	Motion for an order to cerufy record, assignments of error, appellants' non-printed brief and proof of service filed.
February 17, 1955	Court of Appeals Transcript, Original Papers and Bill of Exceptions filed.

Date	
February 17, 1955	Cause docketed on appeal as of right.
March 17, 1955	Leave to file Appellee's brief instanter filed.
March 17, 1955	Appellee's non-printed brief filed. 3/18/55 proof of service filed.
March 18, 1955	Motion by appellee to dismiss appeal as of right and proof of service filed.
June 1, 1955	Motion by Appellee to Dismiss Appeal as of Right, Overruled. J. 41, p. 510.
June 1, 1955	Motion for an Order directing the Court of Appeals of Hamilton County to Certify its Record, allowed. J. 41, p. 511.
[fol. 306]	
June 1, 1955	Order # 3022 issued to Clerk of Courts to Certify Record.
June 10, 1955	Certificate of Court of Appeals Filed.
June 11, 1955	Cause stands for hearing on Appeal as of Right.
July 13, 1955	Appellants' non-printed supplemental brief and proof of service filed.
October 5, 1955	Supplemental brief of appellee and proof of service filed.
February 23, 1956	Judgment Affirmed. J. 41, p. 697.
February 25, 1956	Notified Application for Rehearing to be Filed.
March 8, 1956	Application for Rehearing and proof of service Filed.
March 21, 1956	Rehearing Denied. J. 42, p. 18.
March 21, 1956	Original Papers, Bill of Exceptions sent to Clerk. 4/6/56, Returned.

Date		
April	26, 1956	All Court of Common Pleas and Court of Appeals Files taken by Mr. Johnson.
June	16, 1956	Notice of Appeal to Supreme Court of the United States Filed.

Journal Entries

Journal No. 41, p. 510. Wednesday, June 1, 1955.

Motion By Appellee To Dismiss Appeal As Of Right. Hamilton County.

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal No. 41, p. 511. Wednesday, June 1, 1955

Motion For An Order Directing The Court Of Appeals Of Hamilton County To Certify Its Record:

It is ordered by the Court that this motion be, and the same hereby is, allowed.

[fol. 307]

Journal No. 41, p. 697. Thursday, February 23, 1956

Appeal From The Court Of Appeals Of Hamilton County:

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellants its costs herein expended taxed at $.....

Ordered, That a special mandate be sent to the Court of Common Pleas of Hamilton County, to carry this Judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals, of Hamilton County, "for entry".

Journal No. 42, p. 18 Wednesday, March 21, 1956

Rehearing Docket:

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

[fol. 308]

IN THE SUPREME COURT OF OHIO

ASSIGNMENT OF ERRORS—Filed February 17, 1955

Assignment Of Error No. 1. The Court erred in not finding the defendants not guilty of contempt since they each validly asserted their constitutional privilege to decline answers to the questions.

Assignment Of Error No. 2. The Court erred in not finding the defendants not guilty of contempt since the legislative mandate to the Commission violates on its face Article I Section II of the Ohio Constitution and the XIVth Amendment to the United States Constitution and since the questions asked and information sought by the Commission of these defendants violated their rights under the said Article I Section II of the Ohio Constitution and the said XIVth Amendment to the United States Constitution.

Assignment Of Error No. 3. The Court erred in not finding the defendants not guilty of contempt since the defendants were not advised by the Commission of its rejection of their assertion of their constitutional rights and since the defendants were not specifically ordered by the Commission to answer the questions.

Assignment Of Error No. 4. The Court erred in not finding the defendants not guilty of contempt since the [fol. 309] Commission was without legal authority to hold a hearing or investigation and to question the defendant since said Commission was created by Act of the 99th

General Assembly of Ohio which had adjourned sine die prior to the holding of the hearing on October 20, 1952, and the said Act creating the Un-American Activities Commission is unconstitutional and void in directing the Commission to report its investigations to the General Assembly of Ohio to be convened after the adjournment of the 99th General Assembly establishing and appointing the Commission.

Assignment Of Error No. 5. The Court erred in not finding the defendants not guilty of contempt since the Commission was unconstitutional in that the legislature had unconstitutionally delegated it executive and judicial powers.

Assignment Of Error No. 6. The Court erred in suggesting that the Immunity Statute G. C. 60 (R. C. 101.44) applied to these cases.

Assignment Of Error No. 7. The Court erred in failing to apply the law that prohibits a State from legislating or conducting legislative investigations in a field which has been reserved by the United States Constitution to the Federal Government and on which Federal legislation has been enacted.

Filed, The Supreme Court Of Ohio, February 17, 1955.

[fol. 311]

IN THE SUPREME COURT OF OHIO

Case No. 34361

OPINION—February 23, 1956

1. A commission created by statute, which is authorized to function after sine die adjournment of the General Assembly and which is composed solely of members of the General Assembly, impersonally described, and whose designated function is to investigate subversive activities and "to recommend such additional legislation or revision of existing laws as may seem advisable and necessary" to the next General Assembly, is within the creating powers of the General Assembly under Section 8, Article II of the Constitution of Ohio, authorizing that body to obtain

through committees or otherwise information affecting prospective legislation, is within the term, "committee," as used in that article, possesses all the attributes of a "select committee" of the General Assembly, and is, in fact, a "select committee" thereof within the purview of Section 12845, General Code (Section 2917.42, Revised Code).

2. The General Assembly and its committees have a right to the testimony, pertinent to the matter under inquiry, of each and every citizen of this state in order to obtain information affecting legislative action under consideration or in comtemplation, (sic) and each citizen has a corresponding duty to give such testimony, subject only to the protection afforded him by the Constitution and by statute.

3. A witness appearing before a committee of the General Assembly, who objects to a propounded question, the objection being in language which the committee might [fol. 312] reasonably be expected to understand as an attempt to invoke the rule of privilege against self-incrimination, thereby invokes any protection against self-incrimination to which he may be entitled under the Constitution of Ohio, regardless of whether the witness' reference is to it or to the Constitution of the United States.

4. Immunity from prosecution pertains solely to a prosecution in the same jurisdiction, and where the immunity is full and sufficient within the state it affords the protection against compulsory self-incrimination guaranteed by the state Constitution and supplants the rule of privilege based thereon.

5. Where there is statutory immunity granted the witness, which affords him as much protection against self-incrimination as that to which he is entitled by the constitutional provision against self-incrimination, there devolves upon the witness a clear duty to give his testimony free of a refusal to answer based upon the rule of privilege arising from the constitutional provision; and the protection against self-incrimination afforded by the Constitution is not abrogated in any manner by a statute setting out a penalty for a breach of this duty.

6. Where a witness has a duty to give testimony free of a refusal to answer on the ground of self-incrimination by a statutory grant of full and sufficient immunity from prosecution, and where it is made a crime to refuse to answer questions pertinent to the matter under inquiry, and where the witness refuses to answer on that ground, he is [fol. 313] guilty of a violation of the criminal statute regardless of whether he is subsequently directed to answer.

Decided February 23, 1956.

Appeal From The Court Of Appeals For Franklin County.

Appeal From The Court Of Appeals For Hamilton County.

In cause No. 34311, appellant Anna H. Morgan, hereinafter called appellant, pursuant to subpoena, appeared before the Ohio Un-American Activities Commission at a hearing held by it in Columbus, Ohio, on April 1, 1952.

After being sworn, appellant refused to answer substantially each and every question propounded to her, "under the Fifth Amendment of the Constitution, because to do so would give your committee an opportunity to incriminate me."

Subsequently, on May 21, 1952, appellant was indicted under Section 12845, General Code (Section 2917.42, Revised Code), for her refusal to answer 37 of the questions so propounded.

Her demurrer to the indictment, filed October 25, 1952, having been overruled, appellant, in writing, waived her right to trial by jury, and the cause was tried before a judge of the Common Pleas Court of Franklin County on November 16, 1953.

At the trial the state called as witnesses Gordon Renner, Samuel L. Devine and Edwin H. Hammock.

The first two witnesses are attorneys at law who were members of the 99th General Assembly and the Ohio Un-American Activities Commission, Renner being the elected chairman and Devine the elected secretary thereof, and [fol. 314] both were present at the hearing at which appellant appeared.

Hammock is a court stenographer who was employed by the commission and who recorded the hearing out of which the indictment and trial here under consideration arose.

These witnesses were, of course, subjected to cross-examination. Other than this, however, there was neither testimony nor evidence offered by appellant, she apparently being content to rely upon the validity of either her earlier attack upon jurisdiction by demurrer or her motion for a directed verdict of acquittal duly made at the close of the trial.

The only item of physical evidence in the record is a copy of a subpoena which purports to be a copy of the subpoena duly served upon appellant and by virtue of which she appeared before the commission. It was introduced by the state and its validity is not questioned.

The trial court sustained appellant's motion for a directed verdict of acquittal upon five counts of the indictment, finding that the questions therein included were either not pertinent to the matter under inquiry by the commission or were repetitious of other questions as to the indictment, overruled said motion with respect to the remaining counts, found appellant guilty thereon and imposed sentence.

The Court of Appeals for Franklin County affirmed the judgment of the trial court, and the cause is before this court both as an appeal of right and by the allowance of appellant's motion to certify the record.

In cause No. 34361, appellants Raley, Stern and Brown, hereinafter called defendants, pursuant to subpoena, ap- [fol. 315] peared before the Ohio Un-American Activities Commission at a hearing held by it in Cincinnati, Ohio, on October 20, 1952.

Upon the refusal of each to answer certain questions propounded to him, on the ground that to do so might tend to incriminate him, the commission, in compliance with the provisions of Section 76-32, General Code (Section 103.35, Revised Code), caused proceedings in contempt to be prosecuted in the Common Pleas Court of Hamilton County.

Separate indictments were returned by the Grand Jury of Hamilton County, charging defendants with specified

violations of Section 12137, General Code (Section 2705.02, Revised Code).

By agreement defendants were tried together before a judge of the Court of Common Pleas, after having individually waived in writing the right to trial by jury.

The trial court found each defendant guilty of contempt as charged in all counts of each indictment, and proceeded to impose sentence.

On appeal to the Court of Appeals for Hamilton County, the causes were consolidated, and that court affirmed in part and reversed in part the judgments of the trial court; and the cause is before this court both as an appeal of right and by the allowance of a motion to certify the record.

OPINION: Matthias, Judge.

These cases involve not only the appeal of Anna H. Morgan (cause No. 34311), but also the appeal of Talmadge Raley, Joseph Stern and Emmet Calvin Brown (cause No. 34361).

[fol. 316] Since the questions raised in each are similar except in one significant respect, the following reasoning and conclusions, written with specific reference to and upon the facts of the Morgan appeal, apply with equal force to the appeal of Raley, Stern and Brown.

From the numerous errors assigned by appellant, the issues raised which are determinative of the case concern:

I. The jurisdiction of the trial court to hear the cause and impose sentence, dependent upon whether appellant appeared before a body which was legally constituted and of which she could be held in contempt and whether such body brought the action in an appropriate manner.

II. Whether appellant by refusing "under the Fifth Amendment" to answer questions sufficiently indicated her intention to invoke whatever rule of privilege regarding self-incrimination to which she was entitled under the Constitution of Ohio.

III. Whether such rule of privilege, if sufficiently invoked, was in fact available to her in view of the Ohio immunity statute.

IV. The necessity of a direction to answer, after each refusal on the ground of self-incrimination, to sustain a finding of contempt.

These matters will be considered in the above order.

I

Appellant attacked the jurisdiction of the trial court to hear this cause and impose sentence, by attacking the indictment upon demurrer. The jurisdictional questions raised by the demurrer and saved by appellant's assignment [fol. 317] of errors to this court are essentially twofold:

A. Was the Ohio Un-American Activities Commission a legally constituted body having the power to compel the attendance and testimony of witnesses on April 1, 1952, which was after sine die adjournment of the General Assembly which created it?

B. If the commission was a legally constituted body, was it a select committee of the General Assembly authorized to prefer charges of contempt under Section 12845, General Code (Section 2917.42, Revised Code), and if so was it precluded from using this remedy by the provisions of Section 76-32, General Code (Section 103.35, Revised Code)?

A.

The power of the General Assembly to create investigative bodies is a necessary incident to its power to legislate and to the correlative power to secure sufficient information to enable it to legislate intelligently and independently.

This power is granted, as follows, to the General Assembly by Section 8, Article II of the Constitution of Ohio:

"Each house * * * shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, * * * and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers."

It is seen that the General Assembly is granted by the people of Ohio the power to obtain information affecting [fol. 318] legislation under consideration or in contemplation by the use of *committees or otherwise.*

This court considered an example of a method "otherwise" than "through committees" of obtaining information for legislative purposes in the case of *State, ex rel., Herbert v. Ferguson, Aud.,* 142 Ohio St., 496, 52 N. E. (2d), 980.

That case concerned the constitutionality of the Post-war Program Commission which was established by a special act of the 95th General Assembly. It was composed of a specified number of members of the General Assembly, impersonally described, and certain others who were not members of the General Assembly, and its purpose was essentially to make investigations and to report its recommendations based thereon to the Governor and the General Assembly on or before January 15, 1945, *which was after the next General Assembly,* the 96th, *convened.*

The court, in the fifth paragraph of the syllabus, found:

"A commission composed of members of the General Assembly and others to make investigation of and recommendations on important matters of legislative concern, is within the creative powers of the General Assembly under Section 8, Article II of the Constitution, authorizing that body to obtain through committees or otherwise information affecting prospective legislation."

Thus, this court has recognized that Section 8, Article II, empowers the General Assembly to create a commission for investigative purposes which shall function after sine [fol. 319] die adjournment and make recommendations to the next General Assembly.

We hereby approve that finding. See, also, 49 American Jurisprudence, 258, States, Territories, and Dependencies, Section 41, and cases cited.

It is important to note here that such a commission, when recognized as authorized by Section 8, Article II, may be given the means of exercising the correlative power, expressly granted in this section of the Constitution, to "enforce the attendance and testimony of witnesses, and the production of books and papers."

It is clear, then, that the General Assembly has the power to create an investigative body which is authorized to function after sine die adjournment, and that it validly exercised this power in creating the Ohio Un-American Activities Commission by statute.

B.

Appellant was indicted, tried and convicted for violating the provisions of Section 12845, General Code (Section 2917.42, Revised Code), which is as follows:

"Whoever, having been subpoenaed or ordered to appear before either branch of the General Assembly, or before a standing or select committee of the General Assembly, or either branch thereof, fails so to do, or, having appeared, refuses to answer a question pertinent to the matter under inquiry, or to produce, upon reasonable notice, books, papers or documents in his possession or under [fol. 320] his control, pertinent thereto, shall be fined not less than one hundred dollars nor more than five thousand dollars."

Whether a body created by the General Assembly is a select committee within the meaning of this section is determined by the purpose and functions for which such body was created as indicated in the resolution or act of the General Assembly establishing it. The name of such body is not controlling in the absence of a specific definition thereof in the creating statute or resolution.

In considering the constitutionality of the act creating the Post-war Program Commission in the *Ferguson case, supra,* this court discussed the *function* of the body created by the General Assembly.

Determining that the General Assembly had not, by delegating sovereign powers to the program commission, created civil offices which members of that Legislature would be forbidden to hold by virtue of Section 19, Article II of the Constitution, which prohibits the appointment of members of the General Assembly to any civil office created during their terms of office, the court said:

"The act involved establishes a commission, the described functions of which, for the most part, consist of finding facts, assisting in the formulation of plans and the making of recommendations. Surely, this cannot be said to constitute the exercise of sovereign powers."

Similarly, the act with which we are concerned established a commission, the described functions of which con-
[fol. 321] sist of finding facts and making recommendations.

We have described the Post-war Program Commission as an example of the use of the legislative investigative powers conferred by Section 8, Article II, which method is "otherwise" than "through committees."

Since the body created by the act establishing the Post-war Program Commission included members other than legislators, it could not definitively be called a "committee" within the purview of the use of that word in Section 8, Article II, which must be held to refer only to committees composed solely of members of the General Assembly.

Where, however, a body is created by the General Assembly, by statute, which is composed solely of members of the General Assembly, impersonally described, and whose duties are to investigate subversive activities and "to recommend such additional legislation or revision of existing laws as may seem advisable and necessary," it is a "committee" of the General Assembly under Section 8, Article II of the Constitution, and is a select committee thereof within the purview of Section 12845, General Code (Section 2917.42, Revised Code), having the power to cause the prosecution of a witness for contempt under that section.

Appellant contends that, even though this be so, Section 76-32, General Code (Section 103.35, Revised Code), provides an exclusive remedy to be used by this particular body, thus precluding the application of Section 12845, *supra*.
[fol. 322] Section 76-32, General Code (Section 103.35, Revised Code), provides, in part:

"* * * on the refusal of any person or officer to testify to any matters regarding which he may be lawfully interrogated * * * the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for contempt

to be filed and prosecuted in the Common Pleas Court of any county under the provisions of Sections 12138 to 12146, inclusive, of the General Code."

The General Assembly chose the phrase, "may be authorized," rather than the phrase, "shall be authorized" or "must be authorized," in authorizing proceedings under Sections 12138 to 12146, General Code. It is presumed it had a reason for so choosing.

"The intention of the Legislature as to the mandatory or directory nature of a particular statutory provision is determined primarily from the language thereof. * * * a provision couched in permissive terms is generally regarded as directory or discretionary. This is true of the word, 'may' * * * ." 50 American Jurisprudence, 49, Statutes, Section 28, and cases cited.

It is seen that this statute by its own terms simply gives the commission a procedure for instituting a contempt proceeding under Section 12137 to 12146, General Code, which it may use at its discretion.

[fol. 323] The fact that the Legislature has endowed a particular committee which (sic) a *permissive* procedure for punishing witnesses for contempt, which is other than the procedure it has given all like bodies, neither excludes the operation of such usual procedure nor precludes its use by any standing or select committee.

However different it might be if the permissive statute were mandatory, the fact remains, from what has been said, that the Ohio Un-American Activities Commission had the power to cause appellant to be indicted and prosecuted under the provisions of Section 12845, General Code (Section 2917.42, Revised Code).

Since the commission, in this case, chose to institute proceedings under a statute providing other than the permissive procedure given it, the validity of such permissive procedure is not here before the court. The procedure chosen is unassailable.

II

We must consider next whether the language used by appellant in giving her reason for refusing to answer was

sufficient to invoke any rule of privilege arising from the provisions guaranteeing protection from compulsory self-incrimination embodied in the Constitution of Ohio.

The record discloses that at the time of the hearing appellant, after having been interrogated and having stated her name, refused to answer, in the following words, the question, "Where do you reside, Mrs. Morgan?":

[fol. 324] "I regret that I cannot answer your question under the Fifth Amendment of the Constitution, because to do so would give your committee an opportunity to incriminate me."

After this she continued to refuse, "under the Fifth Amendment," to answer questions.

The state argues that by the use of this terminology the witness failed to invoke the only constitutional protection pertaining to self-incrimination available to her while appearing before a committee of the General Assembly, to wit, that provided by Section 10, Article I of the Constitution of Ohio.

This argument is based upon the well known doctrine which this court restated in the case of *State* v. *Lindway*, 131 Ohio St., 166, 2 N. E. (2d), 490, as follows:

"The * * * Fifth * * * (Amendment) to the Constitution of the United States, prohibiting * * * compulsory self-incrimination * * * (is) directed exclusively against the activities of the federal government and * * * (has) no application to the states and their agencies." See, also, *Feldman*, v. *United States*, 322 U. S., 487, 490, 88 L. Ed., 1408, 64 S. Ct., 1082, 154 A. L. R., 982, and cases therein cited.

However, in the case of *Quinn* v. *United States*, 349 U. S., 155, 99 L. Ed., 964, 75 S. Ct., 668, the Supreme Court of the United States, considering whether a witness called before a subcommittee of the Committee on Un-American Activities of the House of Representatives, who refused to answer, basing his refusal upon the refusal by a former [fol. 325] witness to the effect of a declination to answer under the "First and Fifth Amendments" and the "First Amendment to the Constitution, supplemented by the Fifth Amendment," had sufficiently claimed the privilege, said:

"It is agreed by all that a claim of the privilege does not require any special combination of words. * * * If an objection to a question is made in any language that a committee may reasonably be expected to understand as an attempt to invoke the privilege, it must be respected both by the committee and by a court * * *."

We are in complete accord with that conclusion and with the reasoning which supports it and conclude that a witness appearing before an investigating committee of a state Legislature, who objects to a question, the objection being in language which the committee may be reasonably expected to understand as an attempt to invoke the rule of privilege against self-incrimination, whether it be by an appeal to the federal Constitution or to a state Constitution, has thereby invoked any protection against self-incrimination to which he may be entitled under either instrument.

It follows that appellant sufficiently indicated her invocation of any rule of privilege to which she was entitled under the protection against self-incrimination afforded her by Section 10, Article I of the Constitution of Ohio.

III

The above finding leads us to the next question raised by this appeal. We must decide whether the immunity [fol. 326] granted a witness appearing before a select committee of the General Assembly by Section 60, General Code (Section 101.44, Revised Code), is so full and sufficient as to supplant the protection provided by the rule that testimony is legally privileged where it might subsequently be used against the witness in a criminal prosecution, which rule is based on the provision of Section 10, Article I of the Constitution of Ohio, providing that "no person shall be compelled, in any criminal case, to be a witness against himself."

Section 60, General Code (Section 101.44, Revised Code), provides, in part:

" * * * the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against him, *nor shall a person*

*be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he so testifies * * * .*" (Emphasis ours.)

Although the provisions of this section of the Code have never been construed by this court, the case of *Mouser* v. *Public Utilities Commission,* 124 Ohio St., 425, 179 N. E., 133, considered the provisions of Section 553, General Code, which are similar in wording and intent. The hearings in the *Mouser case* were held by the Public Utilities Commission of Ohio.

Section 553 provided, in part:

"A person shall not be excused from testifying * * * in a proceeding based upon or growing out of violation of the provisions of this chapter, on the ground that the testimony [fol. 327] * * * may tend to incriminate him * * * *but no person having so testified shall be prosecuted or subjected to a penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified* * * * ." (Emphasis ours.)

The similarity of the italicized portions of these two statutes is obvious.

In the *Mouser case,* this court, in construing the immunity provisions of the Public Utilities Act, said:

"Section 553, General Code, confers upon such witness full and complete immunity by preventing prosecution or subjection to penalties against him 'on account of any transaction, matter or thing concerning which he may have testified.'. Since that section affords the witness such absolute immunity, it deprives him of his constitutional right to refuse an answer; and for so refusing he may be punished for contempt."

We find this construction to apply in like manner to the immunity statute here under consideration.

Appellant argues that she is afraid of *federal* prosecution, and that, since the state cannot provide immunity from such prosecution, the state immunity afforded her does not give sufficiently comprehensive protection to deprive her of her constitutional right to refuse to answer.

The question is thus refined to whether a state immunity statute, which is admittedly sufficient to preclude prosecu-

tion under the laws of the state but which does not afford immunity from federal prosecution, supplants the right [fol. 328] of a witness, based upon the protection guaranteed by the *state* Constitution, to refuse to answer on the ground of self-incrimination.

In the case of *United States* v. *Murdock*, 284 U. S., 141, 76 L. Ed., 210, 52 S. Ct., 63, 82 A. L. R., 1376, the Supreme Court of the United States said:

"This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, *and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute.* The principle established is that *full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination.*" (Emphasis ours.)

In like manner the Supreme Court later said:

"The immunity from prosecution, like the privilege which it supplants, pertains to a prosecution in the same jurisdiction." *Feldman* v. *United States*, 322 U. S., 487, 493, 88 L. Ed., 1408, 64 S. Ct., 1082, 154 A. L. R., 982.

And in the *Feldman case* Mr. Justice Frankfurter, speaking for the majority of the court, quoted Chief Justice Taney in *Abelman* v. *Booth*, 21 How., 506, 516, 16 L. Ed., 169, as follows:

"The powers of the general government, and of the state, although both exist and are exercised within the same ter- [fol. 329] ritorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a state judge of a state court, as if the line of division was traced by landmarks and monuments visible to the eye."

Thus, the state and national governments are held by the Supreme Court of the United States to be separate

sovereignties, and protection by one in granting sufficient immunity within its domain is sufficient to impose upon the witness the duty of testifying without invoking the privilege of self-incrimination, without regard to protection against the other within its separate domain.

Those decisions of the Supreme Court of the United States were occasioned by an attempted use of the rule protecting the individual from being forced to give testimony which might incriminate him. The rule of privilege with which they dealt is based upon the protection afforded the individual by the Fifth Amendment to the Constitution of the United States, which says:

"No person * * * shall be compelled in any criminal case to be a witness against himself * * * ."

We have here under consideration an attempted use of the same rule except that in this instance the rule of privilege is based upon the protection afforded by Section 10, Article I of the Constitution of Ohio, which says:

"No person shall be compelled, in any criminal case, [fol. 330] to be a witness against himself."

"Where the provisions of the national and state Constitutions on any subject are identical, the state courts usually acquiesce in the decisions of the national courts interpreting and applying such provisions * * * ." 11 American Jurisprudence, 741, Constitutional Law, Section 105, and cases cited.

We find no valid reason for disagreeing with the interpretations and applications by the Supreme Court of the United States, as hereinbefore set out, and conclude that the inability of the state of Ohio to provide immunity from possible federal prosecution does not defeat the immunity statute here under consideration, which grants complete immunity from prosecution by the state.

It follows that the immunity from prosecution by the state of Ohio concerning any of the matters to which appellant might have testified afforded her as much protection from self-incrimination as the Constitution of Ohio guarantees, and her refusal to answer on the basis that she might incriminate herself was an attempted invocation of a

rule of privilege which, by virtue of the immunity granted, was unavailable to her.

IV

Appellant argues that she could not have been guilty of contempt before the Ohio Un-American Activities Commission in view of the fact that the committee did not, upon each refusal to answer, specifically direct her to answer, [fol. 331] and that such direction was necessary in order to show contumaciousness on her part.

The question presented is whether a witness appearing before an investigating committee of the General Assembly, who refuses to answer a question *on the ground that to do so would be self-incriminating,* must be directed, after such refusal, to answer in order to be found guilty of contempt by a violation of Section 12845, General Code (Section 2917.42, Revised Code), which is a criminal statute.

This section, set out in full *supra,* reads in part:

"Whoever * * * refuses to answer a question pertinent to the matter under inquiry * * * shall be fined * * * ."

The term, willful, or, deliberate, does not appear in the statute. The only basis for objection to a question propounded by the commission to be seen in the statute is the provision that the question must be "pertinent to the matter under inquiry." Nowhere in the statute can there be read or inferred a requirement that a witness must be directed to answer a question, upon his refusal to so do *on the ground of self-incrimination,* in order to show a violation of the statute.

In the case of *State* v. *Huffman,* 131 Ohio St., 27, 1 N. E. (2d) 313, this court, in the first paragraph of the syllabus, held:

"We have no common-law crimes in Ohio; neither do we have common-law criminal procedure. Consequently, if a [fol. 332] statute defining an offense in Ohio provides that it must be committed with a particular intent, such intent becomes a material element of the offense and must be alleged in the indictment and proved on trial. *On the contrary, if a statute defining an offense is silent on the question of*

intent, it is not necessary to allege and prove an intent to commit the offense." (Emphasis added.) See, also, *State* v. *McLean*, 121 N. C., 589, 28 S. E., 140, 42 L. R. A., 721; and *State* v. *Zichfeld*, 23 Nev., 304.

Section 60, General Code, grants immunity to all witnesses appearing before "a committee or subcommittee" of the General Assembly, or of either house thereof, "except as to a person who, *in writing*, requests permission to appear" or who "*in writing* waives the rights, privileges and immunities granted by this section."

Thus, the immunity granted by this section enveloped appellant like a cloak the instant whe (sic) was sworn, and required not only an affirmative act on her part but an affirmative act *in writing* in order to be divested.

The basic reason for a direction to answer is to inform the witness that the committee is overruling the objection to the question on the ground of privilege against self-incrimination; that it, in effect, refuses the witness' claim that to answer would tend to incriminate him.

This, of course, presupposes a right of the witness to claim the privilege in the first instance. Here, however, in view of Section 60, there is no need for such protection, which the witness is presumed to know, as the witness is [fol. 333] presumed to know that he may be prosecuted, however, unsuccessfully, under Section 12845, for *any* refusal to answer. The witness who attempts to invoke the privilege cannot later claim that he was uncertain as to his rights. Appellant was "bound rightly to construe the statute. * * * (Her) mistaken view of the law is no defense." *Sinclair* v. *United States*, 279 U. S., 263, 299, 73 L. Ed., 692, 49 S. Ct., 268.

Thus, the witness knew or was presumed to know that under the statute her invocation of the rule of privilege against self-incrimination was a useless act under the law, since such rule of privilege had been supplanted by a statute affording her sufficient immunity from prosecution to satisfy the protection against self-incrimination guaranteed by the Constitution. Her mere refusal to answer on such a basis constituted contempt, and the interpolation of such a frivolous objection imposed no duty upon the commission

to inform her of what she already knew—that she had no right to refuse to answer on such grounds.

It is seen that a direction to answer in such a case would serve no substantial purpose. Although it may be true that the commission could have informed appellant that she was in contempt and subject to prosecution which might be avoided, at the sound discretion of the commission, if she chose to answer, an answer even at that point would, upon a subsequent trial, go only to show a mitigation of the contempt already committed.

It is axiomatic that neither ignorance of the law nor a mistake in its interpretation affords a valid defense in a [fol. 334] criminal prosecution. A witness cannot be heard to say in in (sic) one breath that he knows enough of the law to claim the privilege against self-incrimination and in the next breath that he knows nothing of the immunity statute, or that he has misconstrued it.

Appellant argues that she refused to answer because she felt she was not afforded such full and complete immunity as to deprive her of the right to refuse on the ground of self-incrimination. Regardless of whether this be interpreted to show a willful and contumacious refusal to answer, it certainly indicates a deliberate refusal to answer under a mistaken interpretation of the law.

It is argued also that the *Quinn case, supra,* is, in effect, a mandate by the Supreme Court of the United States to all legislative bodies, both national and state, that they must specifically direct a witness to answer before he may be cited for contempt, and a directive to all judicial tribunals in the nation that such must be the case before a witness may be convicted of contempt.

An examination of the reasoning behind that decision compared with the reasoning behind the decisions in the instant cases shows such argument to be fallacious.

We are here interpreting the effect of a *state* immunity statute (Section 60, General Code) providing not only that testimony given by a witness shall not be used in a subsequent criminal proceeding but also that the witness shall not "be prosecuted or subjected to a penalty or for-[fol. 335] feiture for or on account of a transaction, matter or thing, concerning which he testifies"; and we are de-

termining for the first time in regard to this particular statute that such protection is sufficient to supplant the rule of privilege against self-incrimination, i.e., that both the statute and the rule stem from the guaranty of protection from self-incrimination afforded by Section 10, Article I of the Constitution of Ohio, and that the scope of protection afforded by the former is sufficient to supplant the protection afforded by the latter.

Th[illegible] however, is not the case with the federal immunity statute, Section 3486, Title 18, U. S. Code, which was applicable to the defendant in the *Quinn case*.

The first federal statute regarding the immunity of a congressional witness, Section 859, Revised Statutes, was enacted in 1857 and was almost identical in wording and effect with the first federal immunity statute regarding witnesses appearing before federal judicial tribunals, Section 860, Revised Statutes, which was enacted in 1868.

In 1892, the Supreme Court of the United States, in the case of *Counselman* v. *Hitchcock*, 142 U. S., 547, 35 L. Ed., 1110, 12 S. Ct., 195, held that Section 860 did *not* afford sufficient protection to supplant the right of a witness to refuse to answer on the ground of self-incrimination. See *United States* v. *Bryan*, 339 U. S., 323, 335 *et seq.*, 94 L. Ed., 884, 70 S. Ct., 724, for a lucid history of Section 860 and its purpose and effect.

[fol. 336] The conclusions set out in the *Counselman case* have never been overruled, and in the *Quinn case* the Supreme Court said:

"Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under Section 192. Thus if he raises an objection to a certain question—for example, lack of pertinency or the privilege against self-incrimination—the committee may sustain the objection and abandon the question, even though the objection might actually be without merit."

It is important to note here that the federal immunity statute which was applicable to the defendant in the *Quinn case*, in its original as well as its present form, provides a witness only with protection from *the use of his testi-*

mony against him and not, as is provided by the Ohio statute, with *protection from prosecution* for matters concerning which he testified. For an interpretation of a federal statute very similar in wording to the Ohio statute, which is in complete accord with the conclusions herein reached, see *Brown* v. *Walker*, 161 U. S., 591, 40 L. Ed., 819, 16 S. Ct., 644. See, also, *Hale* v. *Henkel*, 201 U. S., 43, 66 *et seq.*, 50 L. Ed., 652, 26 S. Ct., 370.

The point derived from the above is that it has been recognized for approximately 63 years that a witness approaches a hearing before a *congressional body* with a recognized and legitimate right to refuse to answer on the ground of self-incrimination.

[fol. 337] It is apparent that, once a ligitimate (sic) right to refuse to answer on the ground of self-incrimination is recognized, a body of decisions should arise as to whether such refusal is founded upon sufficient reason (*Arndstein* v. *McCarthy, Marshal*, 254 U. S., 71, 72, 65 L. Ed., 138, 41 S. Ct., 26; *United States* v. *White*, 322 U. S., 694, 88 L. Ed., 1542, 64 S. Ct., 1248, 152 A. L. R., 1202; *Hoffman* v. *United States*, 341 U. S., 479, 95 L. Ed., 1118, 71 S. Ct., 814; *United States* v. *Burr*, 25 Fed. Cas., 40, No. 14, 692e; *Blau* v. *United States*, 340 U. S., 159, 95 L. Ed., 170, 71 S. Ct., 223), whether the witness in fact invokes the rule of privilege (*Smith* v. *United States*, 337 U. S., 137, 93 L. Ed., 1264, 69 S. Ct., 1000; *Quinn* v. *United States, supra*; *Bart* v. *United States*, 349 U. S., 219, 99 L. Ed., 602, 75 S. Ct., 712; *Emspack* v. *United States*, 349 U. S., 190, 99 L. Ed., 585, 75 S. Ct., 687) and whether the witness's refusal to answer is contumacious, i. e., whether he is made aware that, although his right to refuse to answer is recognized, his reason in the particular instance is ruled invalid and his claim of privilege rejected (*In re Chapman*, 166 U. S., 661, 41 L. Ed., 1154, 17 S. Ct., 677; *McGrain* v. *Dougherty*, 273 U. S., 135, 71 L. Ed., 580, 47 S. Ct., 319; *Sinclair* v. *United States*, 279 U. S., 263, 73 L. Ed., 692, 49 S. Ct., 268; and the *Quinn*, *Bart* and *Emspack cases, supra*).

Imposing as is the body of decisions regarding these questions, it must be remembered that each is based funda-

[fol. 338] mentally upon the premise that, since sufficient immunity is not afforded the witness by the federal statute,

he has a ligitimate (sic) right to assert the privilege against self-incrimination. It must be remembered also that this basic premise results from the decision in *Counselman* v. *Hitchcock, supra,* which was an interpretation by the Supreme Court of the United States of the effect of a *federal* statute upon a *federal* constitutional provision.

The fact that the Supreme Court of the United States has construed the effect of a federal statute upon a portion of the federal Constitution in a certain manner, however, in no way precludes the highest tribunal of a state from construing the effect of a similar but not identical state statute (as hereinbefore set out) upon a similar provision of the state Constitution, particularly where it is well recognized that the operation of such constitutional provisions is directed exclusively and individually to the federal and the state governments, *respectively.*

"We (the Supreme Court of the United States) have nothing to do with the interpretation of the Constitution of the state and the conformity of the enactment of the Assembly to that Constitution; those questions are for the consideration of the courts of the state, and their decision of them is final. The Fifth Amendment to the Constitution of the United States is not restrictive of state, but only of national, action." *Hunter* v. *City of Pittsburgh,* 207 U. S., [fol. 339] 161, 176, 52 L. Ed., 151, 28 S. Ct., 40. See, also, *Missouri* v. *Dockery,* 191 U. S., 165, 48 L. Ed., 133, 24 S. Ct., 53, 63 L. R. A., 571; *Merchants' & Manufacturers' Bank* v. *Pennsylvania,* 167 U. S., 461, 42 L. Ed., 236, 17 S. Ct., 829; and *Gabrielli, a Minor,* v. *Knickerbocker,* 12 Cal., (2d), 85, 82 P. (2d), 391.

It follows that the *Quinn case,* admittedly based upon the assumption that the defendant therein had a right to refuse to give self-incriminating answers, is not controlling in any manner in the instant cases.

The conclusions herein are based upon a source of reasoning which is separate and distinct from that in the *Quinn case,* to wit, an interpretation of the effect of a state statute upon a provision of a state Constitution, and when we conclude that, because of Section 60, General Code, appellant approached the hearing before the Ohio Un-American Activities Commission without a legitimate right to refuse to

answer on the ground of self-incrimination, and that her refusal to answer on that ground constituted a violation of Section 12845, General Code, without further indication of criminal intent, we do not reach that point at which it becomes important to consider whether the commission overtly ruled upon an invalid assertion of the privilege, and, thus, the *Quinn case* is not only not controlling in this instance but it is inapplicable to the facts as well.

It is argued also that the chairman of the commission in some way contributed to appellant's misfortune by stating [fol. 340] to her:

"Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.

"Mrs. Morgan: Yes.

"Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed."

Although the chairman obviously misstated the law, the question is whether such misstatement affected the alleged violation by Mrs. Morgan of Section 12845, General Code.

In order to find that the chairman's statement affected her *conviction*, we must necessarily find that it in some way affected appellant's *behavior at the hearing*. A thorough search of the record fails to disclose that this was the case.

Appellant indicated, in a prepared statement which she presented to the commission prior to the hearing, that she intended to "claim the protection of the Fifth Amendment and remain silent before this committee," and she refused to answer on that ground the 12 questions propounded to her *prior to the chairman's statement*. Her subsequent refusals to answer are made in the same words and manner as her prior refusals.

It is also interesting and significant to note that the chairman, at another point in the Morgan hearing, said, "Mrs. Morgan, are you aware of the fact that your failure [fol. 341] to answer questions—some questions of this commission, might also *tend to put you in an embarrassing situation?*"

The only hypothesis consistent with the record of this hearing is that Mrs. Morgan was well aware of what she considered to be the law and her rights thereunder, and that such statement neither misled her nor induced her to act in any manner other than that which she deliberately chose.

The state advances the theory that a direction by the commission to answer was unnecessary since a statement read by appellant just prior to being sworn, and later introduced into the record of the hearing, is alone sufficient to establish the contumacious intent in her refusal to answer. In the light of what we have said, however, concerning the necessity of a direction to answer, it is neither necessary to consider this premise nor to give such statement, which is highly abusive and vitriolic, the dignity of perpetuation in this opinion.

Thus, since the immunity statute precluded appellant's right to claim the rule of privilege against self-incrimination, and Section 12845, General Code (Section 2917.42, Revised Code), makes a refusal to answer questions pertinent to the matter under inquiry a misdemeanor, appellant's refusal to answer under the claim of the rule of privilege constituted a violation, and as a direction thereafter could serve no substantial purpose it was unnecessary.

We are all familiar with the excesses and abuses which led to the formulation of the common-law rule, the sub- [fol. 342] stance of which has been incorporated into the Constitution of the United States and the Constitutions of the various states, granting each individual the right to refrain from giving testimony which may be used against him in a criminal prosecution. To expound further on this maxim and the necessity therefor would be to unnecessarily reiterate that which has already been well said many times.

This rule of privilege is a personal right whose sole purpose is to protect the individual from subjection to pressure, physical or mental, to give evidence or testimony *upon which may be based his subsequent punishment or forfeiture.* The belief is universal in civilized countries that it is reprehensible for an individual to be required by any authority to convict himself through testimony or evidence pried from him against his will.

It must be remembered, however, that, although the people who founded our government did withhold from it certain personal privileges, justifiably, in the light of the lessons history teaches, such as the privilege against self-incrimination, they also pledged to it certain duties. Just a few of the duties owed the governments, both state and national, by each individual, who is an integral part thereof, are the duties of support by taxes, obedience to laws, defense in time of war and stress and service upon juries.

A breach of any of these duties is punishable by law on the theory that, ultimately, since the duties are owed by [fol. 343] all, a breach by one constitutes an offense against the rest. It is thus that in many jurisdictions criminal actions are brought in the name of "the people" of the prosecuting political entity.

In like manner each citizen owes a duty to the legislative branch of the government to give it the benefit of any knowledge or facts of which he may be possessed in order that it may write the laws with as much back-ground information and intelligence as possible.

Of course, even this duty is not superior to the protection from self-incrimination, which must for good reason remain inviolate. But when the reason for the rule, i. e., the possibility of a prosecution or penalty imposed by the inquiring sovereign and based upon coerced testimony, is satisfied by a statutory grant of immunity which is as full and complete as is necessary under the law, the legislative branch of the government is thereby enabled to demand of the individual the performance of this duty free of a refusal to answer on the ground of self-incrimination, and may provide a penalty for the breach of such duty.

The argument that an immunity statute coupled with a statutory demand for pertinent testimony, regardless of whether it might, in the absence of immunity, be of an incriminating character, in effect amends the Constitution is without merit.

The fact is that the immunity legislation and the demand [fol. 344] for testimony cannot amend and do not violate the Constitution nor do they abridge the rule of privilege arising therefrom. A statutory grant of immunity which is

full and sufficient simply provides a witness by statute the protection against self-incrimination which the Constitution guarantees.

The Constitution and the rule of privilege merely safeguard the individual from being forced to give testimony or evidence which may be used against him in a criminal prosecution. Section 60 not only provides that the testimony given by a witness shall not be used as evidence in a criminal proceeding against him, but the statute provides further than the witness *shall not be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter or thing concerning which he testifies or produces evidence.*

It is seen that under such circumstances the state has seen fit to forfeit its right to prosecute a witness for his part in any criminal activity of which it becomes aware by virtue of testimony given by the witness before a legislative body in search of information. Thus, the witness is given more protection by immunity than is afforded him by the Constitution and the rule of privilege. Surely under these circumstances it is not proper for the government to call upon its citizens to perform an inherent duty free of a limitation the cause for which has been statutorily removed.

[fol. 345] It is readily seen that if the government should decide to withdraw its grant of immunity to the witness it would instantly forfeit its right to testimony or evidence which might tend to incriminate him. There would then be no protection by immunity equal to the protection by privilege, and the constitutional rule of privilege would obtain in its full force and effect.

Where there is immunity granted, however, which is so full and sufficient as to supplant the protection afforded by the rule of privilege, the refusal of a witness to give pertinent testimony upon the ground of privilege can be considered no more than an attempt to block the legislative effort and the refusal to perform a duty owed the government by virtue of citizenship; and a breach of such duty may be punished as other breaches of duty owed the government.

In conclusion, we find:

I. It was within the power granted the General Assembly by Section 8, Article II of the Constitution of Ohio, authorizing that body to obtain through committees or otherwise information affecting legislative action under consideration or in contemplation, to create the Ohio Un-American Activities Commission and to authorize it to function after sine die adjournment and to report to the following General Assembly; and, since the function and structure of such a body rather than its name determine its character, the fact that this commission had the function and structure of a select committee of the General Assembly rendered it, in fact, a "select committee" thereof [fol. 346] entitled to all the rights and prerogatives of select committees. One of such prerogatives is the right to bring a contempt action under the provisions of Section 12845, General Code (Section 2917.42, Revised Code), unless the committee is specifically precluded from doing so by the Legislature. No such preclusion is evident in the permissive provisions of Section 76-32, General Code (Section 103.35, Revised Code), which merely provides this particular commission with an alternative method of punishing for contempt.

II. A witness appearing before a committee of the General Assembly, who objects to a propounded question, the objection being in language which the committee might reasonably be expected to understand as an attempt to invoke the rule of privilege against self-incrimination, whether it be by a reference to the Constitution of the United States or the Constitution of Ohio, thereby invokes any privilege to which he may be entitled under either, and appellant, by refusing "under the Fifth Amendment" to answer questions, did in fact invoke any privilege to which she would ordinarily be entitled under the Constitution of Ohio.

III. Appellant's invoking of the rule of privilege in this case, however, was ineffective, since the immunity granted by Section 60, General Code (Section 101.44, Revised Code), is so full and complete as to satisfy the protection

against self-incrimination guaranteed by the Constitution of Ohio and to supplant the privilege arising therefrom, [fol. 347] and it imposed upon appellant the duty to give her testimony free of a refusal based upon this rule of privilege.

IV. A direction to answer, after appellant's refusal upon the ground of self-incrimination, was unnecessary since the immunity granted her precluded the possibility of justifying a refusal on this ground. The commission asked questions which were pertinent, and the refusal alone of the witness to answer on the ground of self-incrimination constituted contempt.

The issue apparent in cause No. 34361 which is not involved in the Morgan appeal is whether the Ohio Un-American Activities Commission was unconstitutional in that the General Assembly had delegated to it powers and functions belonging exclusively to the judiciary of Ohio by virtue of Section 1, Article IV of the Constitution of Ohio.

At the outset it is obvious from reading those sections of the General Code relating to the Un-American Activities Commission that there was absolutely no attempt to give the commission any direct judicial authority whatsoever.

Section 76-32, General Code (Section 103.35, Revised Code), in effect specifies that any of the acts described in Section 12137, General Code (Section 2705.02, Revised Code), which may be generally described as statutorily defined contempts of court, shall be contempts of the legislative body and punishable at the behest of the commission under the procedure set out in the following sections, i. e., Sections 12138 to 12146, General Code (Sections 2705.03 to 2705.09, Revised Code).

[fol. 348] The defendants were found guilty of violations of subdivision 3 of Section 12137. This section is clearly severable and reads as follows, so far as it affects cause No. 34361:

"A person guilty of any of the following acts may be punished as for a contempt:

"• • •

"3. A *failure* to obey a subpoena duly served, or a refusal to be sworn, or *to answer as a witness, when lawfully* required." (Emphasis ours.)

It must be noted that, since Raley, Stern and Brown were convicted of violating the provisions of subdivision 3 of Section 12137, they have no interest in and cannot question the constitutionality of the power given the commission with regard to those parts of the statute which have nothing whatsoever to do with their convictions, regardless of whether certain of the acts which "may be punished as for a contempt" under this section and which are admittedly contempts of court could also be construed contempts of a legislative body, or made so by legislative enactment.

"* * * a defendant charged with the violation of a statute, but not charged with any act coming under a certain severable section of the statute, is without the interest necessary to question the validity of that section." 11 American Jurisprudence, 755, Constitutional Law, Section 111. See, also, *State* v. *Hill,* 168 La., 761, 123 So., 317, 69 A. L. R., 574.

[fol. 349] The offense set out in the "severable section" of Section 12137, of which defendants were found guilty, is the refusal to answer as a witness when lawfully required to do so. The *power* of the General Assembly to label such refusal an offense when committed before a duly constituted legislative body and to authorize such body to cause proceedings to be instituted in a court of law for the punishment of such refusal to answer arises directly from the provisions of Section 8, Article II of the Constitution of Ohio, and not from other constitutional powers by virtue of which the General Assembly enacts legislation pertaining to courts of law.

It is seen that, regardless of the existence of Sections 12137 to 12146, General Code (Sections 2705.02 to 2705.09, Revised Code), the General Assembly could enact statutes, applying solely to legislative bodies, providing that a failure to obey a subpoena duly served or a refusal to be sworn or to answer as a witness when lawfully required to do so would constitute an offense punishable by a court of law, and could prescribe the punishment which would follow a conviction for violating such statutes, which could

be similar to if not in the exact terms as the punishment prescribed in Sections 12142 and 12143, General Code (Sections 2705.05 and 2705.06, Revised Code), which are the statutes under which sentences were or could have been imposed in the instant cases. Such statutes, in the absence of other defects, would be constitutional exercises of the power given the General Assembly by Section 8, Article II. *supra.*

[fol. 350] In this instance it is seen that the General Assembly merely exercised the power given it by Section 8, Article II, in making by reference that which is admittedly a statutory offense with regard to the judiciary a statutory offense with regard to this body of the General Assembly, by including, by reference, the offense described in subdivision 3 of Section 12137, General Code (Section 2705.02 (c), Revised Code), in Section 76-32, General Code (Section 103.35, Revised Code).

The General Assembly having the power to define the offense has the power to prescribe the punishment therefor and the procedure to be followed by its bodies in imposing such punishment, and this it has done in this instance in the same manner in which it chose to define the offense, i. e., by reference.

The fact that the procedure outlined provides for the institution of proceedings in a court of law under specific sections of the General Code certainly indicates an acquiescence to the judiciary rather than an attempted usurpation of its power.

Thus, the inclusion by reference in Section 76-32, General Code (Section 2705.02, Revised Code), of the Un-American Activities Commission sections, of paragraph 3 of Section 12137, General Code (paragraph 3 of Section 2705.02 Revised Code), providing that one "may be punished as for a contempt" for the "refusal * * * to answer as a witness when lawfully required," and Sections 12138 to 12146, General Code (Sections 2705.03 to 2705.09, Revised Code), of the Chapter on Contempt of Court, setting [fol. 351] out the procedure to be used in proceedings based upon such refusal and the punishment upon conviction therefor, is a valid exercise of the legislative power under Section 8, Article II of the Constitution, empowering the

Legislature to compel the attendance and testimony of witnesses. Furthermore, it is clearly not a delegation of judicial power to the Un-American Activities Commission but constitutes merely a definition as to what shall constitute a contempt of such commission and a method of procedure by which proceedings may be instituted by the commission in a judicial tribunal for the punishment of the contempt.

For the reasons given in the Morgan appeal, the defendants *were* lawfully required to answer the questions set out in the indictments, and their refusal to answer on the ground of self-incrimination constituted violations of paragraph 3 of Section 12137, General Code, which, by virtue of Section 76-32, General Code, applies to refusal to answer when lawfully required by the Ohio Un-American Activities Commission.

It follows from what has been said that the judgment of the Court of Appeals for Franklin County in cause No. 34311, affirming the judgment of the trial court which dismissed certain counts of the indictment for repetition and impertinency and found appellant guilty upon the remaining counts, should be, and it hereby is, affirmed; and that the judgment of the Court of Appeals for Hamilton County in cause No. 34361 should be, and it hereby is, affirmed.

Judgments affirmed.

[fol. 352]

Weygandt, C.J., Zimmerman and Bell, JJ., Concur.

Hart and Taft, JJ., dissent.

Stewart, J., dissents in part.

OPINION: Hart, J., dissenting.

At the outset, let me say that I have no sympathy with the positions of the defendants, the espousal of which makes it necessary, in their view, to refuse to answer the questions submitted by the legislative committee. However, the defendants are entitled to all rights guaranteed to them by the constitutions and the laws of the land.

My dissent is directed to the subject discussed in division III of the majority opinion. The question involved is

whether, even though the Ohio immunity statute therein referred to is sufficient to impose upon a witness the duty to testify without the necessity of invoking the privilege as to self-incrimination, the witness nevertheless has a right under the Fifth Amendment to refuse to answer questions in a state proceeding because answers to such questions may be used to incriminate him in a federal prosecution wherein the Ohio immunity statute would not operate to give him protection.

The majority opinion says:

"* * * the state and national governments are held by the Supreme Court of the United States to be separate sovereignties, and protection by one in granting sufficient immunity within its domain is sufficient to impose upon [fol. 353] the witness the duty of testifying without invoking the privilege of self-incrimination, without regard to protection against the other within its separate domain.

"* * *

"We find no valid reason for disagreeing with the interpretations and applications by the Supreme Court of the United States, as hereinbefore set out, and conclude that the inability of the state of Ohio to provide immunity from possible federal prosecution does not defeat the immunity statute here under consideration, which grants complete immunity from prosecution by the state."

In the case of *Counselman v. Hitchcock*, 142 U. S., 547, 35 L. Ed., 1110, 12 S. Ct., 195, the Supreme Court had before it the question of the right of a witness to refuse to testify before a federal grand jury in the Northern District of Illinois concerning an alleged violation of an "act to regulate commerce," on the ground that his answer, if given, would tend to incriminate him. For refusal to answer Counselman was incarcerated. He brought a habeas corpus action to test his right to refuse to testify. In the opinion of the Circuit Court it was held that, although under the Fifth Amendment no person can be compelled to disclose facts before a court or grand jury which might subject him to a criminal prosecution, nevertheless, since the immunity provided by Section 860 of the Revised Stat-

utes of the United States was coextensive with that of the Constitution, Counselman was entitled to no privilege under the Constitution. Section 860 of the Revised Statutes [fol. 354] provided that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence or in any manner used against him in any court of the United States in any criminal proceeding or for the enforcement of any penalty or forfeiture.

The Supreme Court reversed the judgment of the Circuit Court and in the course of its opinion said:

"It remains to consider whether Section 860 of the Revised Statutes removes the protection of the constitutional privilege of Counselman. That section must be construed as declaring that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. It follows, that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence or used against him or his property in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It [fol. 355] could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted. * * *

"* * * *

"It is quite clear that legislation can not abridge a constitutional privilege, and that it can not replace or

supply one, at least unless it is so broad as to have the same extent in scope and effect. It is to be noted of Section 860 of the Revised Statutes that it does not undertake to compel self-incriminating evidence from a party or a witness. In several of the state statutes above referred to, the testimony of the party or witness is made compulsory, and in some either all possibility of a future prosecution of the party or witness is distinctly taken away, or he can plead in bar or abatement the fact that he was compelled to testify.

"We are clearly of opinion that *no statute which leaves the party or witness subject to prosecution after he answers the criminating questions put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States.* Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. [fol. 356] *In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.* • • • " (Italics supplied.)

Specifically, the court in that case held, as stated in the headnotes to the S. Ct. report:

"1. The privilege given by the Fifth Amendment to the Constitution that no person shall be compelled in any criminal case to be a witness against himself extends to a proceeding before a grand jury.

"• • •

"3. Section 860 of the Revised Statutes, which provides that the evidence of a person shall not be used against him in any proceeding for a crime or penalty, or forfeiture, does not take away his privilege, given by the Constitution, that he shall not be compelled in any criminal case to be a witness against himself.

"4. A witness is protected by the constitutional provision from being compelled to disclose the circumstances of his offense, or the sources from which or the means by which

evidence of its commission, or of his connection with it, may be obtained or made effectual for his conviction.

"5. Legislation cannot abridge a constitutional privilege, and cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect.

"6. No statute which leaves the party or witness subject [fol. 357] to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States.

"• • •

"8. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates."

The judgment of the Supreme Court of the United States in the *Counselman case* was approved in the later case of *United States* v. *Bryan*, 339 U. S., 323, 94 L. Ed., 884, 70 S. Ct., 724, in which the provisions of Section 859 of the Revised Statutes of the United States were under consideration. The court said:

"We need not set out the history of the statute in detail. It should be noted, however, that its function was to provide an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought that witnesses could be compelled to give self-incriminating testimony. That purpose was effectively nullified in 1892 by this court's decision in *Counselman* v. *Hitchcock* • • • holding that R. S. Section 860, a statute identical in all material respects with R. S. Section 859, was not a sufficient substitute for the constitutional privilege of refusing to answer self-incriminating questions. Under that decision, a witness who is offered only the par- [fol. 358] tial protection of a statute such as Sections 859 and 860—that his testimony may not be used against him in subsequent criminal proceedings—rather than complete immunity from prosecution for any act concerning which he testifies may claim his privilege and remain silent with impunity."

It is true that the Ohio immunity statute provides not only that the testimony of a witness before such a committee shall not be used as evidence in a criminal proceeding against him, but that a person shall not "be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which he so testifies." However, although a witness may refuse to testify in a federal court as to matters tending to incriminate him, he can not prevent the use in a federal court of testimony of the same character voluntarily given by him in a state court under a state immunity statute. *Feldman* v. *United States*, 322 U. S., 487, 88 L. Ed., 1408, 64 S. Ct., 1082, 154 A. L. R., 982.

How then, notwithstanding some apparent obiter in decisions of the federal Supreme Court, can a state immunity statute, which compels a witness to answer questions which incriminate him and which admittedly in turn may be used to incriminate him in a federal prosecution where the state immunity statute even against prosecution is wholly inoperative to protect him, be valid in view of the constitutional rights of the witness under the Fifth Amendment to the federal Constitution among which is the overall right to avoid compulsory self-incrimination?

[fol. 359] In the instant cases, where the claimed subversive acts of the defendants as against the state government may also be the basis of a prosecution by the federal government for subversive acts against it or the states, I am of the opinion that under the protection of the Fifth Amendment these defendants could lawfully refuse to answer incriminating questions before the legislative committee, notwithstanding the purported protection of the state immunity statute.

OPINION: Stewart, J., dissenting in part.

I could well concur in the syllabus, majority opinion and judgments in the present cases were it not for a glaring feature of the record, which has been glossed over in the majority opinion and to which I shall presently allude.

It must be remembered that the defendants were not tried upon any charges of Communistic activities or upon the abhorrent statement made by Mrs. Morgan, the sole

charge against each of them being contempt, which the General Assembly has made a mere misdemeanor punishable only by a fine (Section 12845, General Code (Section 2917.42, Revised Code), in the Morgan case) and by a fine of not more than $500 or imprisonment for not more than 10 days, or both (Section 12142, General Code (Section 2705.05, Revised Code), in the Raley, Stern and Brown case). Therefore, the vital question in the cases is, were the defendants guilty of contempt by standing on their claim of self-incrimination in refusing to answer some of [fol. 360] the questions propounded to them by the commission?

The majority of the court reasons that, since the Ohio immunity statute gave the defendants immunity from the use of any of their testimony as evidence in any criminal proceeding in this state, and since the Supreme Court of the United States has decided that lack of state power to give witnesses protection against federal prosecution does not defeat the effect of a state immunity statute to abolish protection against self-incrimination, the Ohio immunity statute deprived the defendants of the protection against self-incrimination afforded by the Constitution; and that, since defendants were presumed to know the law, they were in contempt by not answering the questions propounded to them by the commission, because their right of protection against self-incrimination had been abolished.

Ordinarily, this reasoning would be quite logical, but, in the present cases, assuming that defendants were mistaken in their right to rely upon protection against self-incrimination, the commission was likewise mistaken as to the state of the law.

The commission was composed in part of able and experienced lawyers, and it hired special counsel, and yet the defendants were informed by the chairman of the commission that they had a right to rely upon their constitutional privilege against self-incrimination.

In the Morgan case, the chairman of the commission stated: "Mrs. Morgan, I should like to advise you under the [fol. 361] Fifth Amendment you are permitted to refuse to answer questions that might tend to incriminate you."

Even if the chairman was mistaken as to the law and the effect of the Ohio immunity statute, and Mrs. Morgan

was likewise mistaken, how can it be said that she was in contempt of the commission in strictly following its direction and admonition? The point is further emphasized by the fact that in every instance when she refused to answer a question, claiming protection against self-incrimination, she was never directed to answer the question but the interrogator immediately proceeded with another inquiry.

With reference to the Raley, Stern and Brown case, the chairman of the commission was a witness and testified as follows:

"It was the policy of the commission not to press questions which we felt would be of an incriminating nature. For instance, whenever a witness was asked a question—I believe every witness before the commission was asked the question—are you or have you ever been a member of the Communist Party, and if the witness refused to answer that question, we did not press it. Frequently I made statements which indicated the policy of the commission. Whether it was to half of the witnesses before the commission or not, I don't know. Probably less than half. But the statement was, 'We will not require you to answer questions which may incriminate yourself, but we want it clearly understood that you may not refuse to answer questions on the ground it would incriminate some one [fol. 362] else.' And I think through the record generally, although not probably always when I made the statement with respect to one it included the other."

It seems to me that, since the defendants were apprised by the commission at the time they were testifying that they had a right to refuse to answer questions which might incriminate them, they could not possibly in following the admonition of the commission be in contempt of it except possibly as to the questions which the defendants were directed to answer.

In such a situation the case of *Quinn* v. *United States*, 349 U. S., 155, 99 L. Ed., 964, 75 S. Ct., 668, which was properly cited in the majority opinion in support of the third paragraph of the syllabus, is controlling with reference to the necessity of demanding an answer from a witness testifying before an investigating committee before

the refusal of the witness to answer can place him in peril of prosecution for contempt.

The *Quinn case* involved a witness, before a federal legislative committee, charged with contempt. Speaking for the court, Mr. Chief Justice Warren said:

"Section 192, like the ordinary federal criminal statute, requires a criminal intent—in this instance, a deliberate, intentional refusal to answer. This element of the offense, like any other, must be proved beyond a reasonable doubt. Petitioner contends that such proof was not, and can not be, made in this case.

[fol. 363] " • • • in short, unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under Section 192 for refusal to answer that question.

"Was petitioner so apprised here? At no time did the committee specifically overrule his objection based on the Fifth Amendment; nor did the committee indicate its overruling of the objection by specifically directing petitioner to answer. In the absence of such committee action, petitioner was never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt. At best he was left to guess whether or not the committee had accepted his objection."

In the Morgan indictment the charges are that she did "unlawfully and willfully refuse to answer."

Under the situation in the present cases, it seems clear to me that the defendants, after being apprised by the commission that they had a right to rely upon the protection against self-incrimination, could not be in contempt of the commission except as to the few questions which two of them were directed to answer.

OPINION: Taft, J., dissenting.

In the *Morgan case* (No. 34311) the defendant was indicted under Section 12845, General Code (Section 2917.42, Revised Code), which reads.

[fol. 364]. "Whoever, having been subpoenaed or ordered to appear before either branch of the General Assembly, or before a standing or select *committee of the General*

Assembly, or either branch thereof, fails so to do, or, having appeared, refused to answer a question pertinent to the matter under inquiry * * * ." (Emphasis added.)

If the General Assembly, by what it said in providing for the Un-American Activities Commission, expressed an intention that it should be regarded as something other than "a standing or select committee of the General Assembly," then the foregoing statute did not authorize this defendant's indictment. By Section 8, Article II of the Constitution of Ohio, authority is provided for obtaining information affecting legislative action "through committees *or otherwise*." It was not necessary therefore for the General Assembly to obtain the information to be secured by the Un-American Activities Commission through a "committee." It could obtain it "otherwise." *State, ex rel., Herbert*, v. *Ferguson, Aud.*, 142 Ohio St., 496, 52 N. E. (2d), 980.

Under "Part First: Political, Title II, Legislative; Chapter 1, General Assembly," of the General Code, there is a subtitle "Powers of Committees." See "An Act to Revise and Consolidate the General Statutes of Ohio," passed by the General Assembly of Ohio, February 14, 1910, and approved by the Governor, February 15, 1910. Under this subtitle are six sections. Provision is made by Section 57 for subpoenas for witnesses and for books, papers and rec- [fol. 365] ords, by Section 58 for service thereof, by Section 59 for punishment for disobeying a subpoena or refusing to answer a pertinent question, by Section 60 for immunity with respect to testimony "before a committee or subcommittee," by Section 61 for fees of sheriffs and witnesses, and by Section 62 for the administration of oaths. From a reading of these sections, it is apparent that they are to deal as stated therein with "a standing or select committee of the General Assembly or of either house thereof" or a "subcommittee" of such a "committee." Section 57, General Code. The word "committee" is used in each section and appears 19 times in the six sections. The word "commission" is not used anywhere in these sections.

Provision was first made by statute for "the Un-American Activities Commission" by enactment of Sections 76-28 to 76-35, inclusive, General Code, in 1951. Section 76-28 states that "there is hereby created an Un-American Activi-

ties *Commission in the legislative branch of the government.*" (Compare this with the words "a standing or select committee of the General Assembly or of either house thereof" found in Section 57, General Code.) Thereafter, the word "commission" appears in each of the eight statutory sections (Sections 76-28 to 76-35, inclusive, General Code) and it appears a total of 29 times in those sections. Nowhere in those sections is there any suggestion that the General Assembly regarded this "commission" as a "committee." It studiously and successfully avoided the use of [fol. 366] the word "committee." This was probably done because this "commission" was to act after the sine die adjournment of the General Assembly, and the General Assembly was probably fearful that a "committee" of the General Assembly would cease to have any existence on and after such adjournment, as apparently held by the decision of this court in *Gayman* v. *State, ex rel. Rulison, Pros. Atty.*, 79 Ohio St., 444, 87 N. E., 1136 (affirming 11 C. C. (N. S.), 257, 21 C. D., 59).

Specific provisions were made in the act creating this "commission" for administering oaths, issuing subpoenas, compensation of witnesses, and punishment of witnesses disobeying a subpoena or refusing to testify. If the "commission" were a "select committee of the General Assembly," such provisions would have been unnecessary because of the provisions of Sections 57 to 62, General Code. However, no provision was made as to immunity with respect to testimony before such "commission"; and the provision made for punishment of witnesses before the "commission" (Section 76-32, General Code) was different from that which was provided for that purpose with respect to "committees" by Section 59, General Code.

My conclusion therefore is that the General Assembly clearly expressed an intention that the Un-American Activities Commission should be regarded as something other than a "committee of the General Assembly." It follows that Section 12845, General Code, did not authorize the indictment in the *Morgan case.*

In the *Raley case* (No. 34361), for the purpose of escapbeen directed to answer questions after their claims of [fol. 367] ing the contention that the witnesses should have privilege (see *Quinn* v. *United States,* 349 U. S., 155, 99

L. Ed., 565, 75 S. Ct., 668; *Emspak* v. *United States*, 349 U. S., 190, 99 L. Ed., 585, 75 S. Ct., 687; and *Bart* v. *United States*, 349 U. S., 219, 99 L. Ed., 602, 75 S. Ct., 712), the decision of the majority is rested upon the premise that Section 60 (quoted so far as pertinent under IV in the majority opinion) grants immunity with respect to testimony before the Un-American Activities Commission. From the words of that section, it is clear that it relates only to "testimony * * * before a committee" of the General Assembly or of either house thereof or a subcommittee of such a "committee." Since, as hereinbefore pointed out, the General Assembly clearly expressed an intention that the Un-American Activities Commission should be regarded as something other than such a "committee," the premise relied upon by the majority will not support their decision. There is no statutory grant of immunity with respect to testimony before the Un-American Activities Commission.

[fol. 368]

IN THE SUPREME COURT OF OHIO

APPLICATION FOR REHEARING—Filed March 8, 1956

The appellants apply for a rehearing on this cause to the end that the judgment of this Court be vacated and that a judgment be entered revising the judgment of the Court of Appeals of The First Appellate District from which this appeal is taken.

Appellants believe they are entitled to a rehearing for the following reasons apparent from the record in this cause:

1. *The Judgment Violates The "due process" clause Of The Fourteenth Amendment To The United States Constitution.*

This federal constitutional guarantee, relied upon by the appellants, clearly applies to state action and proceedings. Under the circumstances of this case, conviction of appellants of criminal contempt for asserting that they were privileged to refuse to answer questions which might tend to incriminate them deprives them of liberty without due process of law in the following respects:

a. The Court states defendants were found guilty of violating subdivision 3 of Section 12137 O. G. C. which defines as criminal contempt *"refusal * * * to answer as a witness, when lawfully required."* (164 O. S. 129, 553). [fol. 369] Manifestly, this requires wilful disobedience of a lawful order or ruling or legal requirement. Proof of such deliberate defiance of the authority of the Ohio Un-American Activities Commission was therefore an essential element of the alleged crime which the State was required to prove beyond a reasonable doubt. The presumption of innocence surrounded the appellants.

This Court held that appellants were *presumed* to know that the State immunity statute (Section 60 G. C., 101.44 R. C.) denied to them the right to object to answering any questions because of any constitutional provision against self-incriminations. From this premise the Court apparently concludes that defiance of the authority of the commission was proved beyond a reasonable doubt. This conclusion cannot be sustained.

Granting that persons are "presumed to know the law", guilt of criminal contempt cannot be based on such presumptions in this case.

The Court recognizes that appellants were advised by the Chairman of the Commission that "they were permitted to refuse to answer questions that might tend to incriminate them." (164 O. S., 529, 548, 562). The record shows that this official advice was clear, unequivocal and frequently repeated. This instruction was equivalent to a ruling by the Commission that *appellants were not protected by the State immunity law.*

The Court states that Chairman Renner "obviously misstated the law" to the appellants. (164 O. S. 129, 548). The Court further states that the immunity statute was never [fol. 370] judicially construed before this case. (164 O. S. 129, 548).

Is it due process of law to impose a jail sentence and fine on appellants for merely asserting what they believed to be a basic constitutional right after they were instructed by the presiding officer at the hearing that they had such right?

Is due process observed when a witness is officially advised that he may object to answering certain questions on

constitutional grounds, when he then raises such objection to some questions, when his objections are never overruled, when he is never (with the possible exceptions noted in Judge Stewart's dissenting opinion) informed in any way that his objections are legally improper, or when he is never directed to answer?

Are appellants given due process of law when their conviction *rests solely on a presumption that assumes* that their superior knowledge of the law should have made it clear to them that the statement of the law by the Commission was "obviously" wrong?

Are appellants guilty of "refusing to answer when lawfully required" after they were officially advised that they were not lawfully required?

b. The State immunity statute did not apply here and did not give the appellants protection equal to the protection of the right against compulsory self-incrimination. Therefore, defendants were denied the due process when they were convicted of a crime for relying upon such right.

[fol. 371] First, as pointed out by Judge Taft in his dissenting opinion, the immunity statute applies only to hearings before a "select or standing committee" of the legislature.

The statute must be strictly construed and cannot be enlarged by implication.

The Court holds that regardless of the description and designation expressly given to it by the legislature, the Commission was, in fact and legally, a select committee. (Opinion, Syllabus 1).

On the other hand the Court also holds that the Commission was not a committee, but was some other kind of entity within the "or otherwise" clause of Article II, Section 8 of the Ohio Constitution. (164 O. S. 529, 533-5).

The first conclusion is used as the basis for applying the immunity statute. The second conclusion is used as the basis for finding that the Commission could legally function after sine die adjournment of its parent body, the legislature.

These two premises are contradictory and mutually exclusive. The Court should adhere to one or the other construc-

tions. If either is selected, acquital (sic) of the appellants would necessarily result.

Second, the cases cited in the Court's opinion holding that general immunity statutes protecting the witness against prosecution supplant the self-incrimination privilege are not applicable here. The specific requirement of [fol. 372] the Ohio statute directing the Commission to maintain liason (sic) with the federal and other state governments in disclosing persons engaged in criminal suversive (sic) acts is a material distinction. The compelled self-incriminatory testimony thus leads to probable prosecution under the federal or other state laws. This would not be an indirect or incidental result but one which the legislature has authorized and directed the Commission to assist in bringing about.

We submit that under such circumstances, which are not referred to in the Court's opinion, the immunity statute gives only partial and very limited protection.

We can find no case which permits an immunity statute to take away the protection against self-incrimination under such legislation, as is before the Court in this case.

2. *The Judgment Violates Article I, Section 10 of The Ohio Constitution For the Same Reasons Set Forth In Paragraph I Above.*

3. *The Fifth Amendment To The United States Constitution Should Be Applied Here To Protect The Appellants For The Reasons Set Forth In The Dissenting Opinion Of Judge Hart, And For The Additional Reasons Set Forth In Paragraph 1 (b) Above.*

4. *The Court Did Not Rule Upon The Important Point Urged In This Appeal Based Upon The Decision Of The Supreme Court Of Pennsylvania In Pennsylvania v. Nelson, 377 Pa. 58 (assignment of Error No. 7).*

[fol. 373] The important legal question decided in that case is directly involved here. This Court should rule on this point. At least this Court should await the decision of the United States Supreme Court which has admitted the *Nelson* case for review.

5. *Since the Filing Of The Briefs In This Case A Decision Has been Announced By The Court of Appeals For The District of Columbia Which Supports One Of The Points Raised By Appellants.*

In *Watkins* v. *U. S.*—CCA DC No. 21797, decided January 26, 1956, the three judge court held that the questions asked in that case (which were very similar to many of the questions here) were not *pertinent to any proper* legislative purposes and therefore refusal to answer was not contempt.

In that case reargument of the case before the full Court has been ordered.

This Court should allow reargument on the effect of that decision on the instant cases.

6. *The Commission Was Unconstitutionally Delegated A Judicial Power.*

The Court states that the Ohio Un-American Activities Act merely incorporates by reference the punishment and procedure for contempt set forth in the statutes governing contempt of court, and, therefore, this is not an unconstitutional usurpation of judicial power. (164 O. S. 529, 555).

[fol. 374] This conclusion is erroneous in view of the wording of the Statute (G. C. 76-32 R. C. 103.35) which does not merely incorporate by reference, as the Court states, but provides that the proceedings for contempt *"shall be filed and prosecuted * * * under the provisions of Section 12138 to 12146, inclusive of the General Code."*

These sections relate exclusive to judicial contempts. No legislative commission or committee can legally prosecute or cause a witness to be prosecuted for judicial contempt or "under the laws" governing such contempts.

Respectfully submitted:

/s/ Louis C. Capelle, per MJ, /s/ Morse Johnson, /s/ Milton H. Schmidt, per MJ, /s/ Chester R. Shook, per MJ.

Filed, The Supreme Court of Ohio, March 8, 1956.

[fol. 375] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 377]

Record on Remand From the Supreme Court of the United States

THE SUPREME COURT OF OHIO, JANUARY TERM, 1957

Case No. 34361

SUPPLEMENTAL TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES

Action

Appeal from the Court of Appeals of Hamilton County

Motion for an Order Directing the Court of Appeals of Hamilton County to Certify Its Record.

STATE OF OHIO, Plaintiff-Appellee,

v.

TALMADGE RALEY, JOSEPH STERN and EMMETT CALVIN BROWN, Defendants-Appellants.

Attorneys:

C. Watson Hover, Pros. Attorney; Carl Rubin, Asst. Pros. Atty., Court House, Cincinnati, Ohio.

Louis C. Cappelle, Keith Bldg.; Morse Johnson, Dixie Terminal Bldg.; Milton H. Schmidt, Atlas Nat'l. Bk. Bldg.; Chester R. Shook, Keith Bldg., Cincinnati, Ohio.

MEMORANDA OF PLEADINGS, &c., FILED, WRITS ISSUED, &c., JUDGMENTS, ORDERS AND DECREES

Docket Entries

DATE	
Jun. 22, 1957	Certified Transcript of Record sent to Morse Johnson for submission to the Supreme Court of the United States.
Jul. 24, 1957	Mandate from U. S. Supreme Court received and filed, cause vacated with costs

Date	
	and remanded to Supreme Court for consideration in light of Sweezy v. New Hampshire by Wyman, Attorney General and Watkins v. United States.
Aug. 6, 1957	Transcript docket and journal entries and original papers received from U. S. Supreme Court.
Nov. 4, 1957	Appellees non printed brief and proof of service filed.
Dec. 16, 1957	Appellants non printed brief and proof of service filed.
[fol. 378] Jan. 30, 1958	Supplemental brief of appellee and proof of service filed.
Feb. 11, 1958	On remand from the Supreme Court of the United States. Former Judgment adhered to. Journal 42, pages 503-504.
Feb. 13, 1958	Notified application for rehearing to be filed.
Feb. 24, 1958	Application for rehearing filed.
Mar. 5, 1958	Rehearing denied. Journal 42, page 520.
Mar. 20, 1958	Original papers and Bill of Exceptions sent to Clerk.
May 29, 1958	Notice of Appeal to U. S. Supreme Court and proof of Service filed.

JOURNAL ENTRIES

Journal 42, pages 503-504.

Appeal from the Court of Appeals of Hamilton County

This day this cause came on for consideration on the Mandate of the Supreme Court of the United States received and filed herein July 24, 1957, remanding the cause to this Court for further consideration, said Mandate being in the words and figures following, to-wit:

MANDATE OF SUPREME COURT OF THE UNITED STATES

United States of America, ss:

The President of the United States of America:

To the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Whereas, Lately in the Supreme Court of the State of Ohio, before you, or some of you, in a cause between State of Ohio, plaintiff-appellee, and Talmadge Raley, Joseph Stern, and Emmett Calvin Brown, defendants-appellants, No. 34361, wherein the judgment of said Supreme Court duly entered on the 23rd day of February A.D. 1956 is in the following words, viz:

'This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby affirmed and; it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellants its costs herein expended taxed at $.....

Ordered, that a special mandate be sent to the Court of Common Pleas of Hamilton County, to carry this Judgment into Execution.

[fol. 379] Ordered, that a copy of this entry be certified to the Clerk of the Court of Appeals, of Hamilton County, "for entry."

as by the inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-six,

the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record and was duly submitted.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby vacated with costs.

It is further ordered that Talmadge Raley, et al. recover from the State of Ohio One Hundred Dollars ($100) for their costs herein expended.

It is further ordered that this cause be, and the same is hereby, remanded to the Supreme Court of Ohio for consideration in the light of Sweezy v. New Hampshire by Wyman, Attorney General, No. 175, October Term, 1956, decided June 17, 1957; and Watkins v. United States, No. 261, October Term 1956, decided June 17, 1957.

June 24, 1957

And the same is hereby remanded to you, the said judges of the said Supreme Court of the State of Ohio, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the twenty-second day of July, in the year of our Lord one thousand nine hundred and fifty-seven.

Costs of Talmadge Raley et al.

Clerk $100.00

John T. Fey, Clerk of the Supreme Court of the United States. By: /s/ R. J. Blanchard, Deputy.

[fol. 380] In compliance with the Mandate of the Supreme Court of the United States this cause came on to be considered in the light of the decision of the Supreme Court of the United States in the case of Sweezy v. New Hampshire 354 U.S., 234, and the case of Watkins v. United States 354, U.S. 178, and was argued by counsel. On consideration whereof, it is ordered and adjudged that this court does not find enough similarity with the Sweezy and Watkins cases to warrant a change in its former judgment.

It is further ordered that the judgment of this court as reported in 164 O.S. 529, be and the same hereby is, adhered to.

Ordered, That a special mandate be sent to the Court of Common Pleas of Hamilton County to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Court of Appeals of Hamilton County, "for entry."

Journal 42, Page 520

Application for Rehearing

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

[fol. 381]

THE STATE OF OHIO, Appellee,

v.

MORGAN, Appellant. 34311

THE STATE OF OHIO, Appellee,

v.

RALEY ET AL., Appellants. 34361

Opinion on Remand From the Supreme Court of the United States—February 11, 1958

These two causes were before this court on appeals from the Courts of Appeals for Franklin and Hamilton Counties, resulting in judgments affirming the judgments of the Courts of Appeals and reported in 164 Ohio St., 529, 133 N. E. (2d), 104. From those judgments appeals were taken to the Supreme Court of the United States. That court, in two short *per curiam* opinions (*Morgan* v. *Ohio*, 354 U. S., 929, 1 L. Ed. (2d), 1535, 77 S. Ct., 1403, and *Raley* v. *Ohio*, 354 U. S., 929, 1 L. Ed. (2d), 1532, 77 S. Ct., 1391), vacated the judgments of this court and remanded the causes "for consideration in the light of *Sweezy* v. *New Hampshire*, 354 U. S., 234 and *Watkins* v. *United States*, 354 U. S., 178."

Per Curiam. In compliance with the mandates of the Supreme Court of the United States, this court has considered the causes in the light of the *Sweezy* and *Watkins* cases and do not find enough similarity to warrant a change in our former judgments. The former judgments of this court as reported in 164 Ohio St. 529, are adhered to.

Former judgments adhered to.

Weygandt, C. J., Zimmerman, Matthias and Bell, JJ., concur.

Taft, J., dissenting. I have no sympathy for the attitude and conduct of these defendants. However, for the reasons briefly stated in my dissenting opinion at the time of the previous hearing of these cases, it is my firm belief that this court cannot affirm the judgment of the Court of Appeals in either case without adding provisions to our [Vol. 382] statutes which were never enacted by the General Assembly. Under the Ohio Constitution, this court has no such legislative authority.

[fol. 383]

IN THE SUPREME COURT OF OHIO

APPLICATION FOR REHEARING—Filed February 24, 1958

The Appellants apply for a rehearing on this cause to the end that the judgment of this Court be vacated and that a judgment be entered reversing the judgment of the Court of Appeals of the First Appellate District from which this appeal is taken.

Appellants submit they are entitled to a rehearing for the following reason:

> *The Court has not detailed the reason why it did not find "enough similarity" in this case and the Sweezy and Watkins cases to warrant reversal in the light of the mandate of the Supreme Court of the United States.*

The Supreme Court of the United States in *Sweezy* v. *New Hampshire*, 354 U. S. 234 and *Watkins* v. *United States*, 354 U. S. 178, promulgated certain standards constitutionally required in all legislative investigations by the Fourteenth Amendment to the United States Constitution. From the record of the case at bar on appeal before it the Supreme Court of the United States (with seven Justices concurring) was convinced that there were substantial reasons to conclude that these standards had not been met and remanded the case for a determination in that light. This Court has found otherwise but it has given no guidance for such determination.

[fol. 384] Following oral argument of this case on the remand, Appellee filed a Supplemental Brief in which the case of *Barenblatt* v. *U. S.* (CCA DC #13327 Jan. 16, 1958) was set out and discussed. There, on a like remand in the light of *Watkins*, the Court, (in a 5-4 decision) determined that from the statement of the counsel of the Committee which was holding the hearing and the nature of the proceedings the witness-defendant Barenblatt had a clear indication of the question under inquiry and that the specific questions asked were pertinent. The Court further quoted from the records of the hearings to show that the Committee went to some length to indicate the

pertinency of the questions. After carefully and thoroughly analyzing the matter, the Court concluded that the subject of the investigation was clearly stated and was not a "mere re-hash" of the admitedly (sic) vague and broad authorizing resolution and that therefore:

> ". . . under the standards laid down for us by the Supreme Court, Barenblatt was made fully aware of the subject under inquiry and was in a position to judge the pertinency of the questions relating to that subject."

Such a determination by the Court in *Barenblatt* clearly distinguishes the facts in that case not only from *Watkins* but also from the case at bar. There is no statement by the counsel of the Ohio un-American Activities Commission or by the Chairman or by any Committee Member thereof which would similarly meet the standards required by *Watkins* and *Sweezy*. There is further nothing in the nature of the proceedings which made Appellants fully aware of the subject under inquiry.

This court in its *per curiam* decision has not stated wherein the standards of *Watkins* and *Sweezy* were satisfied in the case at bar. On appeal the Supreme Court of [fol. 385] the United States is thus placed in the position of not being able to evaluate the reasons for or the basis of this Court's decision.

In addition the *per curiam* decision is signed by four of the judges and one judge is noted as dissenting. Two of the judges who heard the matter have not joined in the decision nor noted their position. Appellants are entitled to have the opinions of all the judges who sat on the case.

Respectfully submitted.

/s/ Louis C. Capella, /s/ Morse Johnson, /s/ Milton H. Schmidt, /s/ Chester R. Shook.

[fol. 386]

IN THE SUPREME COURT OF THE STATE OF OHIO

No. 34361

TALMADGE RALEY, JOSEPH STERN and EMMETT CALVIN BROWN, Appellants,

vs.

STATE OF OHIO, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF UNITED STATES—Filed May 29, 1958

I. Notice is hereby given that Talmadge Raley, Joseph Stern and Emmett Calvin Brown, the appellants above named, hereby appeal to the Supreme Court of United States from the final order of the Supreme Court of Ohio March 5, 1958, denying the Application for Rehearing of said Court's decision of February 11, 1958, in which said Court in compliance with the mandate of the Supreme Court of United States of June 24, 1957, reconsidered the cause in the light of *Sweezy* v. *New Hampshire by Wyman, Attorney General*, No. 175, October Term 1956, decided June 17, 1957, and *Watkins* v. *United States*, No. 261, October Term 1956, decided June 17, 1957, and adhered to its final order denying the Application for Rehearing of its decision of February 23, 1956, affirming the judgment of conviction by the Court of Common Pleas of Hamilton County, Ohio, which were affirmed in part and reversed in part by the Court of Ap-

[fol. 387] peals for the First Judicial District of Ohio.

This appeal is taken pursuant to 28 U.S.C.A., section 1257 (2).

Appellants were convicted of the crime of contempt in violation of Ohio Revised Code Section 2705.02 (formerly Ohio General Code Section 12137) for refusing to answer certain questions propounded to them by the un-American activities commission of Ohio, a legislative commission created by the Ohio Legislature by Ohio Revised Code Sections 103.31 through 103.38 (formerly Ohio General Code

Sections 76-35), and were each sentenced to ten (10) days in jail under each count of the indictment, the sentences to run concurrently, and each was fined $500.00 and costs under each count of the indictments, the fine as to all but the first count in each case being remitted, and each is presently enlarged on bail in the sum of $1,000.00.

II. The clerk will please prepare a supplemental transcript (supplemental to the previous transcript prepared in the previous appeal in this cause) of all the proceedings in the Supreme Court of Ohio in this cause, and include in said transcript the following:

1. Mandate of The Supreme Court of United States of June 24, 1957.
2. Brief of Plaintiff-Appellee.
3. Brief of Defendants-Appellants.
4. Supplemental brief of Plaintiff-Appellee.
5. Per curiam opinion of The Supreme Court of Ohio of February 11, 1958.
6. Dissenting opinion of Justice Taft of February 11, 1958.
7. Application for Rehearing.
8. Transcript of all docket and journal entries.
9. Notice of Appeal to The Supreme Court of United States and Certificate of Service.

[fol. 388] III. The following questions are presented by the appeal:

1. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are unconstitutional because they legislate and authorize legislative investigation in the area of sedition in which area United States Congressional action has preempted and superseded the power of the state.

2. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to

these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that they authorize and direct a legislative commission to exercise the non-legislative power of exposing individuals for the sake of exposure.

3. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that the delegation of authority to the commission was so sweeping, indiscriminate and vague that the constitutionality required preliminary control of the commission by the Legislature was non-existent.

4. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of [fol. 389] the Ohio un-American activities commission, as applied to the appellants, are in violation of the First and Fourteenth Amendments to the Constitution of the United States for the reason that there was no clear determination by the Ohio Legislature that the authorized inquiry into the area of the freedoms protected by these Amendments was justified by a specific legislative need.

5. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that appellants as witnesses before the commission were not able to determine from the statutory delegation of authority to the commission, or from any other indicia of the legislative matters under inquiry, whether the questions propounded to them were pertinent to the matter which the Ohio Legislature intended to have investigated.

6. Whether Sections 103.31-103.38, 2705.02 and 101.44 of the Revised Code of Ohio, as interpreted and applied to

these appellants, were in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that appellants as witnesses were not directed by said commission to answer the questions which formed the counts in the indictments for contempt following appellants' assertions of the privilege against self-incrimination.

7. Whether Sections 103.31-103.38, 2705.02 and 101.44 of the Revised Code of Ohio, as interpreted and applied to [fol. 390] these appellants, were in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that although appellants were specifically and repeatedly advised by said commission that they were protected by their constitutional privilege against self-incrimination said Supreme Court of Ohio subsequently held that appellants were in contempt of that commission for asserting their privilege in refusing to answer certain questions because the State immunity statute, Ohio Revised Code Section 101.44, removed the need for such privilege.

8. Whether Sections 103.31-103.38, 2705.02 and 101.44 of the Revised Code of Ohio, as interpreted and applied to these appellants, were in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that the State immunity statute, Ohio Revised Code Section 101.44, does not and could not grant immunity from prosecution by the United States or other States, particularly in view of the fact that the un-American activities commission of Ohio was authorized and directed by Section 103.34 (B) to make disclosures about matters which could become the basis for prosecution under Federal and State laws to any agency of the Federal, State or local governments.

/s/ Morse Johnson, 921 Dixie Terminal Bldg., Cinti. 2, Ohio, Attorney for Appellants.

[fol. 391] Proof of Service (omitted in printing).

[fol. 392] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 393]

SUPREME COURT OF THE UNITED STATES

No. 175—October Term, 1958

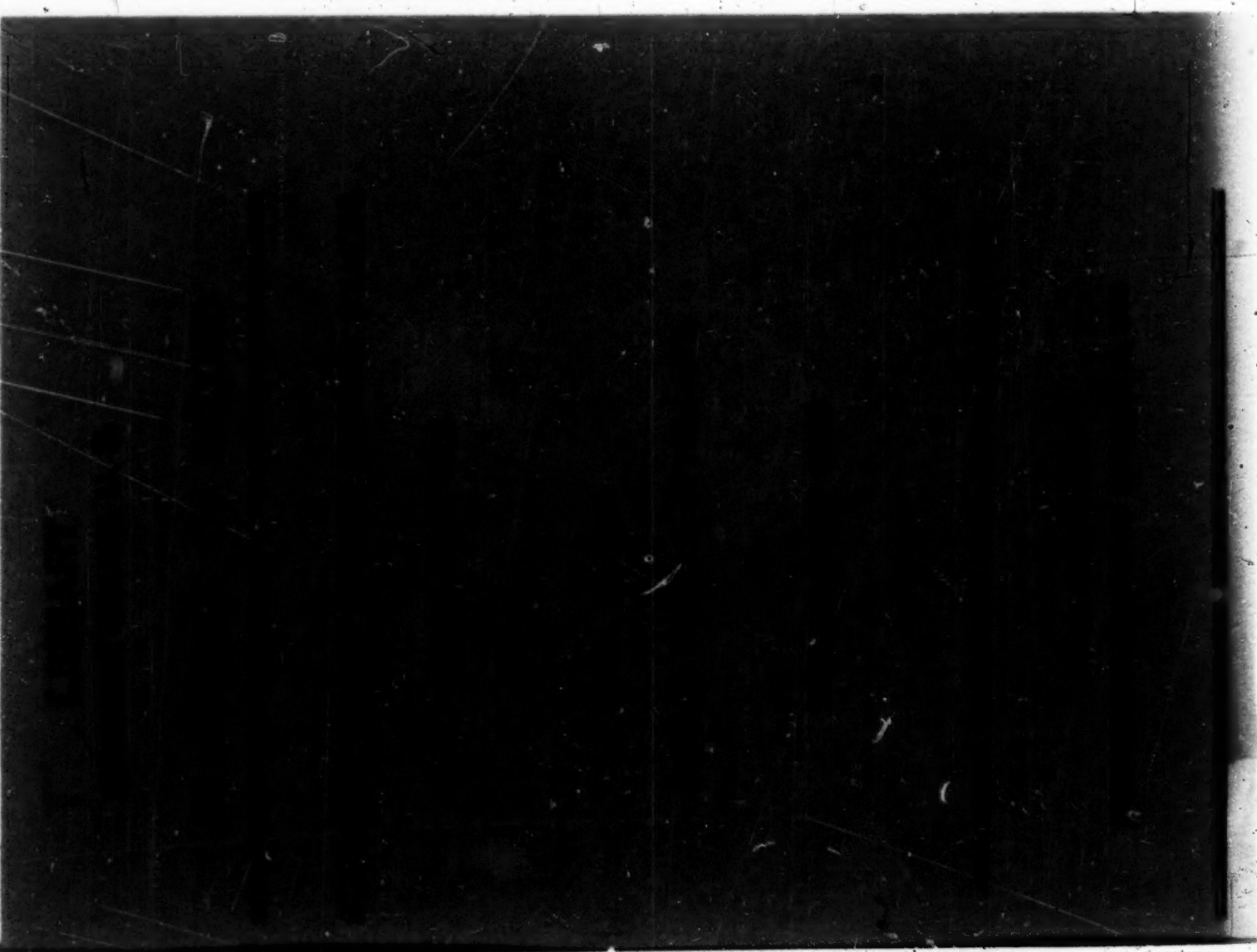
[Title omitted]

ORDER POSTPONING JURISDICTION—October 20, 1958

Appeal from the Supreme Court of the State of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

Mr. Justice Stewart took no part in the consideration or decision of this application.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 463

ANNA H. MORGAN, APPELLANT,

vs.

THE STATE OF OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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[fol. 1]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

THE STATE OF OHIO,
Franklin County, ss:

INDICTMENT—Filed May 21, 1952

Indictment for Refusing to Testify Before a Committee of the General Assembly of Ohio. (Section 12845) (37 Counts)

In the Court of Common Pleas, Franklin County, Ohio, of the Term of April in the Year of Our Lord, One Thousand Nine Hundred and Fifty-two:

The Jurors of the Grand Jury of the State of Ohio, duly selected, impaneled, sworn, and charged to inquire of crimes and offenses committed within the body of Franklin County, in the State of Ohio, in the name and by the authority of the State of Ohio, upon their oath do find and present that Anna H. Morgan, late of said county, on or about the 1st day of April, in the year of our Lord, one thousand nine hundred and fifty-two, within the County of Franklin aforesaid, was subpoenaed and ordered to appear before a select committee of the general assembly of the State of Ohio, said committee being known and constituted as the un-American activities commissison in the legislative branch of the government, as set forth in section 76-28 of the General Code of Ohio, with the power and duty to investigate, study and analyze all facts relating to the activities of persons, groups and organizations whose membership includes persons who have as their objectives or may be suspected of having as their objectives the overthrow or reform of our constitutional government by fraud, force, violence, or other unlawful means; all facts concerning persons, groups and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power, or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government or the

industrial potential of this state; the operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary; to maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same, said powers and duties being fully and completely set forth in section 76-31 of the General Code of [fol. 2] Ohio; and that said Anna H. Morgan having appeared before the aforesaid select committee of the general assembly, known and constituted as the un-American activities commission in the legislative branch of the government, on or about the 1st day of April 1952, within the County of Franklin aforesaid, did unlawfully and wilfully refuse to answer the following questions pertinent to the matter under inquiry:

Count 1: "Where do you reside, Mrs. Morgan?"

Count 2: "Now, Mrs. Morgan, would you explain to the Commission how revealing your address at which you were served with a subpoena by the Sheriff of Franklin County would tend to incriminate you?"

Count 3: "Are you a citizen of the United States, Mrs. Morgan?"

Count 4: "How long have you been a resident of Franklin County, Ohio, Mrs. Morgan?"

Count 5: "Where are you employed, Mrs. Morgan?"

Count 6: "Mrs. Morgan, are you now or have you ever been a member of the Communist Party?"

Count 7: "I will ask you, Mrs. Morgan, if it is not a fact that during the entire time of your residence in Franklin County, Ohio, you have been a member and an active member of the Communist Party of Franklin County?"

Count 8: "Mrs. Morgan, I will ask you if it is not a fact that as of January 9, 1949, you were finance director of the Communist Party of Franklin County?"

Count 9: "I will ask you if on that date you didn't take over the full responsibility as co-chairman of the Franklin County Communist Party, directing registration and securing new recruits?"

Count 10: "I will ask you if in February, 1949, in your capacity as executive secretary of the Communist Party of Franklin County you reported that you had recently attended the Ruthenberg dinner at Cleveland, Ohio?"

Count 11: "Did you report to the Franklin County Section of the Communist Party at the time that Martin Chancery, the Ohio Communist Party secretary, had emphasized that the fund drive in Franklin County being conducted at that time must go over the top with the point that if members had to borrow money to meet the quota, they must do so, and the quota would not be reduced but might be increased ten percent? Do you recall making that report for the Franklin County Communist Section?"

Count 12: "Mrs. Morgan, I will ask you if during that time you were not the paid Communist organizer for the Communist Party in Franklin County, having been promised $35 a week for that duty?"

[fol. 3] Count 13: "I will ask you, Mrs. Morgan, if it is not a fact that on April 24, 1949, you attended a Marxist class held by the Franklin County Communist Party at the home of Manny Shore at 454 South Wayne Avenue at which time you reported that you had received no pay for eight weeks, at $35 a week from the Communist Party.

Count 14: "I will ask you, Mrs. Morgan, if it is not a fact that on May 9, 1949, at a regular meeting of the Communist Party of Franklin County you announced that you and your husband might have to leave Columbus because your salary had not been paid and your husband at that time had no job?"

Count 15: "I will ask you, Mrs. Morgan, if it is not a fact that you were a delegate to the Franklin County Communist Party convention held in Columbus, Ohio, from June 6 to 13, 1949?"

Count 16: "I will ask you if it is not a fact that on the fifth day of June, immediately prior to that con-

vention, you were elected executive secretary of the Franklin County Commmunist Party?"

Count 17: "I will ask you if it is not a fact that on the 26 day of June a Communist Party meeting was held in your home?"

Count 18: "I will ask you if it is not a fact that at that meeting held in your home, Robert Campbell, a state Communist Party functionary, spoke on the subject of white Chauvanism and stated there were two parties in Columbus, a White Communist Party in the North-end and a Negro Communist Party in the South-end?"

Count 19: "I will ask you, Mrs. Morgan, if it is not a fact that on August 12, 1949, the executive committee of the Franklin County Communist Party met in your home?"

Count 20: "I will ask you if it is not a fact that at that meeting Robert Gunkle was introduced as the new party organizer for Franklin County?"

Count 21: "I will ask you, Mrs. Morgan, if it is not a fact that a Communist Party meeting was held in your home on September 16, 1949?"

Count 22: "I will ask you if the principal item of discussion at that meeting held in your home was not the fact that Robert Gunkle had left Columbus, Ohio, without notifying the state committee of the Communist Party?"

Count 23: "And there was discussion as to who would take his place as his successor?"

Count 24: "I will ask you if it is not true in February of 1950 Arthur Rappeport was appointed to succeed Robert Gunkle and he and his wife resided in your home?"

[fol. 4] Count 25: "I ask you if it is not a fact during that period of time your home was not actually the Communist Party headquarters for Franklin County?"

Count 26: "I ask you if it is not a fact on the second day of May, 1950, a Communist Party May Day meeting was held in your home?"

Count 27: "I will ask you if it is not a fact that at that meeting Arnold Johnson was scheduled to speak, had to return to New York when it appeared that

Eugene Dennis might have to go to jail and Frank Hashmall was the substitute speaker?"

Count 28: "Mrs. Morgan, have you ever been employed at the American Zinc Oxide Company?"

Count 29: "Isn't it a fact, Mrs. Morgan, that you were arrested under the name of Catherine O'Rourke for illegal picketing during a strike at the AZO plant?"

Count 30: "Isn't it a fact that as of today, Mrs. Morgan, you are in charge of the activities of the Communist Party of Franklin County?"

Count 31: "Mrs. Morgan, I will ask you if you are not one of the four Ohio sponsors of the petition, 'We charge genocide?'"

Count 32: "I will ask you, Mrs. Morgan, if this is not a petition presented to the United Nations alleging that as the official and studied policy of the United States Government to exterminate Negro race in the United States?"

Count 33: "I will ask you if this is not a publication of the Civil Rights Congress?"

Count 34: "Are you a member of the Civil Rights Congress?"

Count 35: "Are you aware of the fact that the Civil Rights Congress has been cited as both a subversive and Communist organization by the Attorney-General of the United States?"

Count 36: "Is it not a fact, Mrs. Morgan, you are an active member of the Communist Party in Franklin County at the present time?"

Count 37: "Is it not a fact that you were active in Communist Party affairs in Champaign, Illinois, prior to coming to Franklin County?"

Contrary to the Statute in such cases made and provided and against the Peace and dignity of the State of Ohio.

Ralph J. Battlett, Prosecuting Attorney, Franklin County.

[fol. 4a] [Endorsed:] No. 32836. Franklin Common Pleas. The State of Ohio vs. Anna H. Morgan. Indictment for refusing to testify before a committee of the gen-

eral Assembly of Ohio. (Section 12845) (37 counts). A True Bill. Flossie R. Sherwood, Foreman Grand Jury. Filed Court of Common Pleas, May 21, 1952, Franklin County, Ohio, Roy King, Clerk, by George L. Barr, Deputy. Ralph J. Battlett, Prosecuting Attorney, Franklin County, Ohio.

[fol. 5] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO, CRIMINAL DIVISION

No. 32,835

STATE OF OHIO, Plaintiff,

vs.

OSCAR SMIBACK, Defendant

No. 32,836

STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

No. 32,837

STATE OF OHIO, Plaintiff,

vs.

DAVID JACKSON, Defendant

No. 32,838

STATE OF OHIO, Plaintiff,

vs.

ROBERT TERRILL, Defendant

PROCEEDINGS OF MAY 29, 1952 ON ARRAIGNMENT AND PLEA

Before Hon. John R. King, Judge of the Common Pleas Court of Franklin County, Ohio, Criminal Division, on May 29th, 1952, upon arraignment of the above-named Defendants:

[fols. 6-7] Present: Mr. Ralph J. Bartlett, Prosecuting Attorney of Franklin County, Ohio, on behalf of the State of Ohio.

Mrs. Ann Fagan Ginger, Cleveland, Ohio, on behalf of the Defendants, Anna H. Morgan, David Jackson and Robert Terrill.

Mr. Jack B. Dworken, Cleveland, Ohio, on behalf of the Defendant, Oscar Smilack.

* * * * * * *

[fol. 8] Mr. Bartlett: 32,836, State vs. Anna H. Morgan, and the charge in refusing to testify before a Committee of the General Assembly of Ohio, 37 counts.

The Court: How many?

Mr. Bartlet: 37.

The Court: You are charged with 37 counts in the indictment of refusing to testify before the un-American Committee of the General Assembly of the State of Ohio. What is your plea, guilty or not guilty?

Mrs. Morgan: It is my opinion that——

The Court: Now, wait a minute. Are you guilty or not guilty?

Mrs. Morgan: It is unconstitutional, Your Honor.

The Court: I am not asking you that. The Court will determine whether it is constitutional. Are you guilty or not guilty?

[fols. 9-14] Mrs. Ginger: The defendant pleads not guilty, with the ght to withdraw and file——

The Court: The same action. Any pleading that you file must be file- within two weeks.

Mrs. Ginger: All right, Your Honor.

The Court: Has bond been taken care of?

Mrs. Ginger: It has.

Mr. Bartlett: Bond has been arranged, Your Honor.

The Court: All right, step aside.

* * * * * * *

[fol. 15] IN THE COURT OF COMMON PLEAS

No. 32836

STATE OF OHIO

vs.

ANNA H. MORGAN

DEMURRER—Filed October 25, 1952

The defendant Anna H. Morgan now comes and demurs to the indictment presented by the Grand Jury in the April Term of 1952, charging her with the offense of refusing to testify before a committee of the general assembly of Ohio (under Sec. 12845 O.G.C.), on the following grounds:

1st: That the facts stated in the indictment do not constitute an offense punishable by the laws of this State, and

2nd: That it appears on the face of the indictment that the offense charged is not within the jurisdiction of this Court.

Wherefore, this defendant asks judgment of this Court dismissing her and discharging her from the said premises specified in the said indictment.

A brief is filed herewith in support of this demurrer.

Ann Fagan Ginger, Attorney for Defendant, 4 Fayston Street, Boston 21, Massachusetts. HIghlands 5-4412, formerly 10532 Helena Avenue, Cleveland 8, Ohio.

Notice

The State of Ohio will take notice of the filing of the within demurrer of the defendant, with accompanying brief, and that defendant is not asking for oral argument in view of the length of the argument presented in that brief.

Ann Fagan Ginger.

A copy of the within demurrer, notice and brief have been airmailed to Ralph J. Bartlett, Prosecuting Attorney for Franklin County, Columbus, Ohio this 24th day of October, 1952.

Ann Fagan Ginger.

[fol. 15a] [File endorsement omitted.]

[fol. 16] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, CRIMINAL DIVISION

Case No. 32,836

THE STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

INDICTMENT FOR REFUSING TO TESTIFY BEFORE COMMITTEE OF THE GENERAL ASSEMBLY, 37 COUNTS (R.C. Sec. 2917.42, G.C. Sec. 12,845)

Case No. 32,837

THE STATE OF OHIO, Plaintiff,

vs.

DAVID JACKSON, Defendant

INDICTMENT FOR REFUSING TO TESTIFY BEFORE COMMITTEE G.C. Sec. 12,845)

Case No. 32,838

THE STATE OF OHIO, Plaintiff,

vs.

ROBERT TERRILL, Defendant

INDICTMENT FOR REFUSING TO TESTIFY BEFORE COMMITTEE OF THE GENERAL ASSEMBLY, 13 COUNTS (R.C. Sec. 2917.42, G.C. Sec. 12,845)

DECISION ON DEMURRERS FILED BY DEFENDANTS—Rendered on the 13th day of October, 1953

BRYANT, J.

Anna H. Morgan, defendant in Case No. 32,836 was charged in an indictment containing 37 counts with refusing [fol. 17] to testify before a Committee of the General As-

sembly of Ohio contrary to Section 2917.42, R.C., Section 12,845, G.C.

David Jackson, defendant in Case No. 32,837 was charged in an indictment containing 13 counts with refusing to testify before a Committee of the General Assembly of Ohio contrary to Section 2917.42, R.C., Section 12,845, G.C.

Robert Terrill, defendant in Case No. 32,838 was charged in an indictment containing 15 counts with refusing to testify before a Committee of the General Assembly of Ohio contrary to Section 2917.42, R.C., Section 12,845, G.C.

After the return of the above named indictments by the Grand Jury of Franklin County, each of the defendants was arraigned and entered a plea of not guilty reserving the right to withdraw that plea and file other attacks on the indictments. Thereafter a request was made for a bill of particulars which was furnished and motion was made for additional particulars, which was refused by this Court. The case of another defendant indicted at the same time for alleged violation of the same statute became the subject of an appeal to the Court of Appeals and the Supreme Court of Ohio. That case is not before this Court at the present time.

Identical demurrers have been filed on behalf of defendants Morgan, Jackson and Terrill. Counsel for these de- [fol. 18] fendants have filed a consolidated brief and the State of Ohio in reply has filed a consolidated brief. This opinion therefore will deal with questions common to each of the three indictments.

The Ohio Un-American Activities Commission held a public hearing in the City of Columbus on or about April 1, 1952. Certain witnesses were subpoenaed to appear before the said Commission on that date and it is alleged that the three defendants above named were subpoenaed to appear and did appear but refused to answer certain questions pertinent to the matters before the Commission.

In the case of Mrs. Morgan, the indictment, after the usual introductory statement of the qualifications of the Grand Jury, stated in part as follows:

"The jurors of the Grand Jury of the State of Ohio * * * do find and present that Anna H. Morgan late of said County, on or about the 1st day of April in the year of our Lord, 1952 within the County of Franklin aforesaid, was

subpoenaed and ordered to appear before a select committee of the General Assembly of the State of Ohio, said Committee being known and constituted as the un-American Activities Commission in the Legislative branch of the Government, as set forth in Section 76-28 of the General [fol. 19] Code of Ohio, with the power and duty to investigate, study and analyze all facts relating to the activities of persons, groups and organizations whose membership includes persons who have as their objectives or may be suspected as having as their objectives the overthrow or reform of our Constitutional Government by fraud, force, violence, or other unlawful means; all facts concerning persons, groups and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power, or whose activities might adversely affect the contribution of this State to the national defense, the safety and security of this State, the functioning of any agency of the State or National Government or the industrial potential of this State; the operation and effect of the laws of this State, of the several other States, and of the United States, which purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary; to maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this State or of the United States by force, violence, intimidating, sabotage or threats of the same, said powers and duties being fully and completely set forth in Section 76-31 of the General Code [fol. 20] of Ohio; and that said Anna H. Morgan having appeared before the aforesaid select committee of the general assembly, known and constituted as the un-American Activities Commission in the Legislative branch of the Government, on or about the 1st day of April, 1952, within the County of Franklin aforesaid, did unlawfully and wilfully refuse to answer the following questions pertinent to the matter under inquiry:

"Count 1: 'Where do you reside, Mrs. Morgan? * * *' "

This is followed by 36 other counts in which are set forth other questions allegedly asked of the defendant which

she allegedly refused to answer. Among other questions asked according to the indictment were whether Mrs. Morgan was a citizen of the United States, how long she had resided in Franklin County, Ohio, where she was employed, whether she was then or ever was a member of the Communist party and other questions of similar character.

The introductory paragraphs of the indictment against David Jackson and the indictment against Robert Terrill are substantially similar to those above set forth the rest differing principally in the language of the questions propounded to the individual defendants. In general it may be said that most if not all of the questions had to do with the address, occupation employment, citizenship [fol. 21] and alleged connection of the witnesses to the Communist party in Franklin County, Ohio, or in other points nearly having some connection with activities in Franklin County.

As before stated the defendants were indicted for refusing to testify before General Assembly or a Committee thereof contrary to the provisions of Section 12,845, General Code, which provided as follows:

> "Whoever, having been subpoenaed or ordered to appear before either branch of the General Assembly, or before a standing or select committee of the General Assembly or either branch thereof, fails so to do, or, having appeared, refuses to answer a question pertinent to the matter under inquiry, or to produce, upon reasonable notice, books, papers or documents in his possession or under his control, pertinent thereto, shall be fined not less than One Hundred Dollars nor more than Five Thousand Dollars."

This Section now is known as Section 2917.42, Revised Code.

The said Un-American Activities Commission of Ohio which hereinafter will be referred to as the Commission was originally created by amended Senate Bill No. 358 passed by the 99th General Assembly and approved and filed with the Secretary of State on June 18, 1951. It may be [fol. 22] found in 124 Ohio Laws, Page 795. It was given

numbers in the permanent law of the State being then known as Sections 76-28 to 76-35 of the General Code (now designated as Section 103.31 to 103.38 Revised Code.) From Section 103.31 Revised Code we learn that the Commission was created in the legislative branch of the Government, consisting of five members of the Senate and five members of the House of Representatives, respectively. The president pro tempore of the Senate also was made a member and empowered to select the Senate members of the Commission and the speaker of the House of Representatives was made a member and was empowered to appoint the members from the House.

Sections 103.32 and 103.33 deal with the organization and employment of a staff by the said Commission. Section 103.34 authorizes the said Commission to investigate, study and analyze "facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means; * * *". Many other subjects of study, investigation and analysis are referred to including "The operation and effect of the laws of this state, of the several other states, and of the United States, which pur- [fol. 23] port to outlaw and control the activities enumerated in this section and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;" Section 103.35 empowers the chairman of the said Commission "throughout the State, (to) administer oaths, issue subpoenas compelling the attendance of witnesses and the production of any papers, books, accounts, records, documents, and testimony, * * *". The same section authorizes contempt proceedings at the direction of a majority of the members sitting at the time.

The ensuing sections deal with studies by other agencies of government at the request of the said Commission, meetings of the Commission, formation of sub-committees and reports by the said Commission.

As stated above each of the Defendants has demurred to the indictment in her or his case. As the grounds for the demurrers and the brief in support thereof is a consolidated brief, for the purpose of this decision the demurrers will be treated as identical and what is said here, unless

otherwise specifically indicated will apply to each of the three indictments.

This, of course, is a criminal case and it will be well to restate some of the rules which are applicable in passing on such a question as this in all criminal cases. [fol. 24] It was in 1929 that the State of Ohio adopted what is known as the Code of Criminal Procedure and one of the results which followed the adoption of that Code was that all criminal procedure became statutory. In the case of Eastman versus State, 131 Ohio State, Page 1, the ninth branch of the syllabus is as follows:

> "In the exercise of the legislative power vested in it by the Constitution of Ohio, the General Assembly has preempted the fields of both substantive and procedural criminal law in this State. (Paragraph one of the syllabus in the Case of Municipal Court of Toledo v. State, ex rel Platter, 126 Ohio State 103, approved and followed.)"

At Page 8 of the Eastman case, supra, it is said:

> "It must be remembered that there are no common law crimes in Ohio. 12 Ohio Jurisprudence, 48; Vanvalkenburg v. State, 11 Ohio, 404; Mitchell v. State, 42 Ohio State, 383. It is likewise ordinarily true that the General Assembly has provided its own definitions and procedure with the result that criminal procedure in this State is regulated entirely by statutes. 12 Ohio Jurisprudence, 49; Winn v. State, 10 Ohio, 345; Municipal Court of Toledo v. State ex rel Platter, 126 Ohio 103, 184 N.E., 1. Therefore the search for the answer to this question must be conducted accordingly."

In the Platter case, supra, the first branch of the syllabus is as follows:

> "Criminal procedure in this State is regulated entirely by statute, and the State has thus created its system of criminal law covering questions of crime and penalties, and has provided its own definitions and procedure."

[fol. 24a] The Eastman case supra, and the Platter case supra, have been referred to many times in the twenty years

since they were decided. In the case of State v. Edwards, 157 Ohio State Page 175 at Page 180 decided on March 19, 1952, the first branch of the syllabus in the Platter case is set forth in full and referred to with approval.

As above pointed out the Defendants have demurred to the indictment.

Under Section 2941.52, Revised Code defendants are given this right, the statute providing in part: "* * * the Court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto," while Section 2941.53 Revised Code provides as follows: "An accused may except to an indictment by: (A) A motion to quash; (B) A plea in abatement; (C) A demurrer."

However by demurring, a defendant waives defects which may be excepted to by either motion to quash or plea in abatement. Section 2941.59 Revised Code provides as follows:

> "The accused waives all defects which may be excepted to by a motion to quash or a plea in abatement, by demurring to an indictment * * *."

Motions to quash are available under the provisions of Sec. 2941.54 Revised Code. This section provides as follows:

> [fol. 25] "A motion to quash may be made when there is a defect apparent upon the face of the record, within the meaning of Sections 2941.02 to 2941.35, inclusive, of the Revised Code, including defects in the form of indictment and in the manner in which an offense is charged."

It is apparent therefore that at this stage in the proceedings no consideration may be given to defects of the type above referred to. Section 2941.55 defines pleas in abatements as follows:

> "Plea in abatement may be made when there is a defect in the record shown by facts extrinsic thereto."

Defects of this type also are waived and no consideration may be given to any such defects here. This is pertinent for the reason that counsel for the defendants in the consolidated brief on a number of occasions have referred to

matters not appearing in the indictment or the bill of particulars and hence not being a part of the record in this case. When the Court is considering a demurrer all of the well pleaded allegations and the reasonable inferences arising therefrom must be taken to be true. It is not permissible to dispute or deny on demurrer any of such allegations nor is it permissible to refer to facts or happenings [fol. 26] alleged to have occurred but which are outside of the record.

This is further pertinent for the reason that under the provisions of Section 2941.05 Revised Code it is possible that objection might well have been registered to the form of counts 2 to the end thereof in each indictment. On the other hand short forms are encouraged by the Code of Criminal Procedure and under the provisions of Section 2941.08 Revised Code certain defects are listed which do not invalidate an indictment. This section provides in part as follows:

> "An indictment * * * is not made invalid, and the trial, judgment, or other proceedings stayed, arrested or affected: * * *
>
> (K) For other defects or imperfections which do not tend to prejudice the substantial rights of the Defendant upon the merits."

There are three grounds for a demurrer in a criminal case. Section 2941.57 Revised Code provides as follows:

> "The accused may demur:
>
> (A) When the facts stated in the indictment do not constitute an offense punishable by the laws of this State;
>
> (B) When the intent is not alleged and proof thereof is necessary to make out the offense charged;
>
> (C) When it appears on the face of the indictment that the offense charged is not within the jurisdiction of the court."

The defendants rely upon the first ground namely, that [fol. 27] the indictment does not state an offense and the last ground namely, that the offense charged is not within

the jurisdiction of the Court as set forth in Paragraphs (A) and (C) in the section last above set forth.

The final ground of the demurrer (C) namely, that the offenses charged in the various indictments are not within the jurisdiction of the court will be discussed first. It is numbered II and is as follows:

> "II. It appears on the face of the indictments that the offenses charged are not within the jurisdiction of this court in that:
>
> "These indictments were brought under Section 12,845, General Code (R.C. Sec. 2917.42) despite the provisions in Section 76-32, General Code (R.C. Sec. 103.35) which makes it mandatory that proceedings against contumacious witnesses before the said Commission be brought under General Code Sections 12138-12146. (R.C. Sec. 2705.03 to Sec. 2705.09)."

Defendant quotes from R.C. Sec. 103.35 (Sec. 76-32 G.C.) which provides in case of disobedience on the part of the witness "• • • the Chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for contempt to be filed and prosecuted in the court of common pleas • • •." The defendant reasons that the word "may" above set forth should be read "shall". But even if that [fol. 28] meaning be given, which we do not decide, it simply means that members of the Committee where a contempt is committed should authorize the Chairman to proceed under the sections therein enumerated. There is no reason to deduce that this is an exclusive remedy. The situation is one which happens often.

A wife might bring an action for divorce against her husband alleging that he abused and mistreated her. Upon the proper showing made the Court might allow a temporary injunction against the husband from abusing, threatening or in any way harming the wife. If after being served, the husband nevertheless struck, beat or pounded his wife it is conceivable he not only would be in contempt of Court but might be liable to arrest and conviction for assault and battery. We, therefore, find no conflict between them. The two exist concurrently.

Section 2931.03 Revised Code (Sec. 13,422-5 General Code) sets forth the jurisdiction of the Court of Common Pleas in criminal cases. Bearing in mind that the word "crimes" include both felonies and misdemeanors, we find that the Court of Common Pleas has jurisdiction of this offense unless exclusive jurisdiction thereof is given to a court inferior to the Court of Common Pleas. This section provides as follows:

> "The Court of Common Pleas has original jurisdiction of all crimes and offenses, except in cases of minor [fol. 29] offenses the exclusive jurisdiction of which is vested in courts inferior to the Court of Common Pleas."

A holding to this effect may be found in the case of Harris v. Alvis, 61 Ohio Law Abstract, Page 311 decided by the Court of Appeals of Franklin County in 1950 in which the second branch of the syllabus reads as follows:

> "The Court of Common Pleas is a court of general original jurisdiction in criminal matters."

In course of the opinion, Miller, Presiding Judge, at Page 314 and 315 said:

> "The Common Pleas Court is of general original jurisdiction in criminal matters. The Constitution, Section 4, Article IV, provides that the same shall be fixed by law. The provision is not self-executing, but requires appropriate legislation. In compliance with this authority, Section 13422-5, General Code (Sec. 2931.03, Revised Code) has been enacted which provides:
>
> 'The Court of Common Pleas shall have original jurisdiction of all crimes and offenses, except in cases of minor offenses, the exclusive jurisdiction of which is vested in courts inferior to the Court of Common Pleas.' "

It has been held that in prosecutions for offenses such as this, the criminal proceedings may be begun either by affidavit signed and verified by the Prosecuting Attorney or by indictment by the Grand Jury of the County. See State

v. Carpenter, 87 Ohio Appeals 247 in course of which at Page 250 the Court says:

> [fol. 30] "There are other statutory provisions conferring jurisdiction on the Common Pleas Court, in the prosecution of misdemeanors upon indictment by the Grand Jury * * *."

It is made the duty of the Grand Jury of each County to conduct an inquiry or investigation into all offenses committed within the county for which the Grand Jury is sworn and in proper cases to make presentment thereof in the form of an indictment.

Section 2939.09 Revised Code (Sec. 13, 436-5 General Code) sets forth the duty of the Grand Jury in the following language:

> "After the charge of the Court of Common Pleas, the Grand Jury shall retire with the officer appointed to attend it, and proceed to inquire and present all offenses committed within the County."

A violation of Section 2917.42 Revised Code (Sec. 12,845 General Code) is an offense committed within the County and it is the duty of the Grand Jury, when proper evidence of such violation is presented to it, to return an indictment.

From what has been set forth above it is believed that the jurisdiction of the Court of Common Pleas in case of an offense such as charged in these indictments is clear. The demurrer on that ground will therefore be overruled.

Defendants make no claims under the second ground for a demurrer namely, failure to allege intent where proof of intent is necessary (B). Inferentially, such claims may [fol. 31] arise under some of the other grounds set forth. To whatever extent it is in the case it should be pointed out that while guilty knowledge or intent was an essential element in crime at common law and while such knowledge or intent is still required in case of many crimes, the Legislature, having the power to define offenses, is also empowered to set forth the ingredients or elements which make up such offenses. Where the Legislature, in defining an offense, has made the doing of an act an offense without reference to

the intent, the intent with which such act is done is immaterial. In 12 Ohio Jurisprudence Page 61 criminal law, paragraph 18 there appears the following statement:

> "As a general rule, guilty knowledge or intent is an essential element in crime at common law, and also in statutory crime. It has been said that positive action is not criminal unless the intention accompanies the act, either expressly or by inference from the act itself. But this is not always true. The general rule that intent is essential to the commission of crime has its exceptions, and especially so in the statutory definition of crime. It is fundamental that in all cases where the statute makes the intent with which the act is done an ingredient of its criminality, such intent must be averred and proven, either by direct or circumstantial evidence, to support a judgment of conviction; but if an act is made an offense by statute without reference to the intent, the intent with which the act is done is immaterial. There are many cases, in statutes providing police regulations, making certain acts penal, where this element is wholly disregarded."

And if this were not enough, the indictment in each case contains the following language. "Did unlawfully and [fol. 32] wilfully refuse to answer the following questions."

We now come to a consideration of the remaining ground for the demurrer namely, "When the facts stated in the indictment do not constitute an offense punishable by the laws of this State," See Section 2941.57 Revised Code (Sec. 13439-9 General Code). This is sometimes referred to as a general demurrer. With reference to the subject of demurrers, in 21 Ohio Jurisprudence Page 822, indictment and information, Paragraph 128, demurrer—it is said:

> "A demurrer is a confession of the charge for the purpose of raising a question of law. It admits the truth of well pleaded allegations, and is proper where the objection is to the substance of an indictment. In fact it reaches substance only, and not form. A demurrer goes to the facts stated in an indictment or information and alleges that these do not constitute an offense punishable by the laws of this State. * * *"

Several of the objections listed under ground I of Defendants' demurrer may be disposed of by giving a brief review of the constitutional developments in this State with reference to the power of legislative committees. In fact the several objections listed under the general subdivision of "A" may be cleared up by this procedure. This ground is as follows:

> "A. The Un-American Activities Commission of Ohio had no legal existence under the Constitution and laws of Ohio on April 1, 1952, the date on which [fol. 33] defendants allegedly committed the offenses charged, and the persons called before it on that date were under no obligation to answer questions asked by the said Commission as shown by allegations on the face of the indictments."

Among the points urged by Defendants in support of this ground are the following: 1. The 99th General Assembly adjourned sine die in June, 1951, of which fact this court is to take judicial notice and after said date committees of such General Assembly were without power to act under Ohio decisions.

We are asked to and we take judicial notice that the 99th General Assembly, which was in regular session from January 1, 1951, to June 19, 1951, ended its regular session with the final (sine die) adjournment on June 19, 1951. Courts are required to and do take judicial notice of acts of the General Asembly. The Laws of Ohio, Volume 24, which is the official record of legislative acts (except appropriation acts) and joint resolutions so records the period of the 1951 Legislative Session. In 124 Ohio Laws at Page 891 will be found amended Senate Joint Resolution No. 19 adopted May 29, 1951 providing that "When the Senate and House of Representatives adjourn Tuesday, June 19, 1951, the General Assembly shall adjourn sine die."

From this this defendants argue that because of the final adjournment of the General Assembly all committees and [fol. 34] commissions ended and all their powers expired as of the time of the final or sine die adjournment of the Legislature.

If that be the case, it must have been in spite of the will of the Legislature, not because of it. The final passage of

amended Senate Bill 358 of the 99th General Assembly creating the Ohio Un-American Activities Commission did not take place until June 1, 1951 after which it was approved by Governor Frank J. Lausche and filed with the Secretary of State on June 18, 1951. In Section 2 of this act (See 124 Ohio Laws, Page 795) there is an appropriation of Fifty Thousand Dollars for the uses and purposes of the said Commission "for the biennium beginning July 1, 1951 and ending June 30, 1953."

Furthermore, Section 76-34 General Code (Sec. 103.38 Revised Code) provides that the said Commission shall "complete its work by and render a final report of its activities and recommendations to the 100th General Assembly and to the Governor on January 1, 1953 * * *."

Thus by the duties assigned to the said Commission and the very period during which the appropriation for its expenses was made available, it is clear that the Legislature intended the Commission to function after sine die adjourn-
[fol. 35] ment of the said General Assembly.

Thus if the contention of Defendants be true it must be due to the fact that the Legislature lacked the power to create a committee or commission empowered to act after it had adjourned sine die. Before discussing the power of the Legislature in this respect, attention will be called to the second ground, namely, that the Commission was not fulfilling a Legislative function but was usurping powers of the Executive and Judicial branches of the General Assembly. Just how this could be so is not clear for the indictment merely indicates questions which were being asked of the various Defendants and they appear to be clearly within the scope of duties assigned to the said Commission. Legislative committees and commissions for many years have conducted inquiries into matters of legislative interest and, in the main, have done so by calling in witnesses and asking questions. That appears to have been the course followed by the said Commission in the instant cases.

Then there is the third ground set forth under this same heading namely that the Commission is not a select committee because the word "commission" was used instead of "committee" and because of the powers given to the com-

mission and because code numbers were assigned to the act [fol. 36] creating this said commission.

It must be admitted that Section 2917.42 Revised Code (Sec. 12,845 General Code) refers to "a standing or select committee of the General Assembly." And it is likewise true that amended Senate Bill 358, supra, creating the said Commision uses the term "commission." It is therefore the position of the Defendants that the said Commission is not within the language or the meaning of the section under which the indictments were brought.

The word "committee" is derived from the latin word "Committere" meaning "to intrust," (Winston Universal Reference Library) and means "one or more persons appointed to act on, consider or report on any matter." (Winston, supra).

Words and Phrases, permanent edition, Volume 7-A 583-585 defines "committee" as follows:

> "A committee may be defined as a person or persons to whose consideration or determination certain business is referred or confided, and need not consist of more than one person."—Farrar v. Eastman, 5 Me. (5 Greene) 345, 350.
>
> "A 'committee' is a person or persons to whose consideration or determination certain business is referred or confided."—Blaisdell v. Inhabitants of Town of York, 87 Atl. 361, 370; 110 Me. 500.

In 15 Corpus Juris Secundum, Pages 585 and 586, [fol. 37] it is said that "In general" a committee is "a person or persons to whose consideration or determination certain business is referred or confided," while "in parliamentary law" a committee is defined as "a portion of a legislative body * * *" while a "joint committee is a committee consisting of representatives of each of the two houses meeting and acting together as one committee."

This same authority states, at Page 586:

> "A committee may be appointed for one special occasion or it may be appointed to deal with all matters which may be referred to it during a whole session or during the life of the body."

The definitions of "committee" and commission" in Ballentine's Law Dictionary (1948 edition) are very similar. This dictionary defines a committee as follows:

> "A body of persons who have been selected and appointed with authority to perform some public service or duty."

The same authority sets forth the following definition of a commission:

> "A body of persons authorized and appointed to perform some public service or duty."

The act creating the said commission provides that it is in the legislative branch of Government, and further provides that its membership shall be composed of the [fol. 38] President pro tempore of the Senate and five Senators, the speaker of the House and five members of the House. Certainly this is a portion of the two legislative bodies and meets all of the tests and standards for a legislative committee.

Counsel for defendants appear to place much reliance upon the case of State ex rel Rulison v. Gayman, 11 O.C.C. (N.S.) 257, affirmed 79 Ohio State 444. The powers granted to the General Assembly by the Constitution have varied during the 150 years since the creation of the State of Ohio. As they were set forth in the original constitution of the State, its powers were rather broad, then they were sharply curtailed and still later the powers were again broadened. It was during the second phase that the Gayman case supra was decided.

The original constitutional provision in the Constitution of 1802 was found in Article 1 Section 11 which read as follows:

> "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not for a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free and independent state."

So far as implied powers are concerned, the Section just above set forth granted them in broad and sweeping language.

[fol. 39] In the Constitution of 1851, this subject was dealt with but the power was curtailed. In Article 2, Section 8 of the Constitution of 1851 it is provided as follows:

> "Each House, except as otherwise provided in this Constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business."

Thus the implied powers were limited to those which were necessary (1) to provide for its safety and (2) to provide for the undisturbed transaction of its business. This is much narrower than the original form.

In the case of State ex rel Robertson v. Guilbert, Auditor of State, 75 Ohio State, Page 1, at Page 48, Davis, Judge wrote:

> "It is inconceivable that a convention (Convention of 1851) called 'to revise, amend or change the constitution of this State' should not have noticed the difference in the language of the two Constitutions and should not have noticed the significance of the change. The conclusion would, therefore, seem to be irresistible that framers of the Constitution designedly narrowed the grant of powers to each House of the General Assembly to those which are expressly mentioned."

Both the Guilbert and the Gayman case must be taken into account in understanding the meaning of the amendment adopted by the Constitutional Convention of 1912. [fol. 40] In the Guilbert case, supra, the Senate of the Ohio Legislature acting alone, adopted a resolution creating a committee to investigate "charges of corruption existing in the governments of the City of Cincinnati and the County of Hamilton." This resolution referred to charges in the public press and elsewhere that certain officials of Cincinnati and Hamilton County and certain other officials had "made certain collusive illegal contracts and have unlawfully misapplied and misused the public funds." When

the end of the session neared a second resolution was adopted to carry forward the original investigation. The investigating committee was headed by Senator John C. Drake and soon came to be known as the Drake Investigating Committee. The petition in the Guilbert case recited that the Auditor of State refused to pay a debt incurred by the committee. It was an action in mandamus, brought to compel the payment of the bill. The Drake Committee was created in 1906 and came to an end in 1906 when the Guilbert case, above referred to, was decided.

It might well have been inferred from the decision in the Guilbert case, supra, that the principal legal objection was the fact that only one branch of the Legislature, namely the Senate, had adopted the resolution. Two years [fol. 41] later a joint resolution was adopted, concurred in by both houses proposing again to conduct an investigation into affairs in Cincinnati and Hamilton County. The 1908 joint resolution mentioned the abrupt termination of the so-called Drake Investigation stating "The sessions of the committee so appointed were brought to a close by a decision of the Supreme Court of Ohio which held said committee was improperly constituted because it was appointed by but one branch of the General Assembly." The joint resolution of 1908 provided that members from both the Senate and the House of Representatives should serve on the new committee. In the Gayman case supra the Prosecuting Attorney of Hamilton County was plaintiff relator and brought action in the Circuit Court of Hamilton County to oust the members of committee from office. The Circuit Court ordered the ouster of the members of the Committee and this decision was affirmed by the Ohio Supreme Court although only four of the six members of the Court participated in the affirmation and two of the four upon limited grounds only.

In 1912, the Constitutional Convention was convened and one of the proposals was to amend Article 2, Section 8.

Reference to the "Proceedings and debates of the Ohio Constitutional Convention of 1912," Volume II, Page 1164 (Galbreath) shows that the said proposed amendment first [fol. 42] was known as Proposal No. 236 and originated with a delegate from Hamilton County by the name of Wil-

liam Worthington, referred to in the debate as Judge Worthington.

Referring to the proceedings, supra, at Page 1164, the following appears:

> "The President: The next matter before you is Proposal No. 236—Mr. Worthington.
>
> "The proposal was read the second time.
>
> "Mr. Harris of Hamilton: Mr. President and members of the Convention: The proposal referred to is one that I think will receive the unanimous support of the Convention. It is that of Judge Worthington, who ask me by a note on Monday night if I would take charge of the proposal on the floor, owing to his absence because of sickness.
>
> "I have consulted with Mr. Harris, of Ashtabula, the Chairman of the Committee, and he has authorized me to speak in his behalf.
>
> "*The sole object of this proposal is to meet a condition which confronted Hamilton County two years ago when the Famous Drake Investigation was in progress. The Supreme Court of Ohio stopped that investigation on the ground that it was not authorized by a concurrent resolution by both Houses of the General Assembly. This proposal simply meets that condition by giving to each House power to do the things contemplated originallly. The attorneys in the Convention are familiar with the legal aspects and it will not be necessary for me to refer to them.* I sincerely hope you will pay the compliment to my Honorable colleague and let me send a telegram to him that his proposal has been passed on second reading." (Emphasis added)

The roll call following this debate indicated 102 favorable [fol. 43] votes and no opposing votes. Every time this proposal came to a vote it was unanimously approved with no negative votes.

It was approved by a vote of 348,779 in favor and 175,337 against, a majority in favor of nearly two to one. This was the next largest majority of any of the propositions submitted in 1912.

As amended in 1912, Article II, Section 8, of the Ohio Constitution was enacted to read as follows:

> "Each House, except as otherwise provided in this Constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not for the second time for the same cause; and shall have all powers necessary to provide for its safety and the undisturbed transaction of its business *and to obtain through committees or otherwise, information affecting legislative action under consideration or in contemplation or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.*" (Emphasis added).

With such a sweeping change in the language of this section of the Constitution it is of no value to discuss whether the power exercised by the Commission in the instant case was executive, legislative or judicial. The Constitution of Ohio specifically grants the power "to obtain through committees or otherwise information affecting legislative action." It further broadens the scope of [fol. 44] such inquiry not only to matters presently before the Legislative body but also to matters which may be in contemplation. It further grants the clear power "to enforce the attendance and testimony of witnesses."

The Guilbert case, supra, was decided in 1906. The Gayman case was decided in 1908. It is no longer correct to say that these cases represent the law of Ohio. The Constitution, the document upon which both those cases turned has been changed materially and directly.

In the case of State ex rel. Herbert v. Ferguson, 142 Ohio State, Page 496 the Supreme Court considered a similar problem. The Ferguson case supra dealt with the authority of the Post-War Program commission, which was authorized to submit a general report to the Governor of Ohio and the General Assembly on or before January 15, 1945, which would be after the convening of the next

following General Assembly. The Supreme Court held as disclosed in syllabus as follows:

> "A commission composed of members of the General Assembly and others to make investigation of and recommendations on important matters of legislative concern, is within the creative powers of the General Assembly under Section 8, Article II of the Constitution, authorizing that body to obtain through committees or otherwise information affecting prospective legislation."

In course of the opinion at Page 505 it is stated:

> [fol. 45] "The General Assembly has many times created commissions authorized to investigate and report their findings as to conditions with reference to which it contemplated enacting legislation, placing thereon members of the Senate, the House of Representatives, and others as was done in the act under consideration. That practice having been accepted, if not expressly approved, as legitimate and proper for such a long period, if kept within the limitations herein indicated we are disinclined to hold it invalid."

We believe it is significant that the Commission referred to in the Ferguson decision, supra, was created by an act of the General Assembly, namely, *by the enactment of a law.* The Commission here under consideration came into existence by the enactment of a law. The committees under consideration in the Guilbert case, supra, and the Gayman case, supra, were created respectively by a Senate resolution and by a joint resolution.

There is a vast difference. Passage of laws by the General Assembly is surrounded by many safeguards, among them being the provisions for a referendum, the provisions for a larger vote if a measure has been vetoed and the requirement of being read on separate legislative days and being passed upon by both houses. Small wonder it is then, that the decisions treat with much more respect actions of a legislative body which have been taken in con-
[fol. 46] formity with the requirements for enacting a law.

The Supreme Court, in the Ferguson case, supra, referred to the fact that many commissions had been created. Among those dealt with by the 99th General Assem-

bly was the Ohio Program Commission. Action also was taken with reference to the Temporary Unemployment Commission as well as such permanent bodies as the Turnpike Commission, the Racing Commission and the County Budget Commission. Those before the 98th General Assembly included the Ohio Sesquicentennial Commission, the Chronic Alcoholics Commission, the Commission on Interstate Cooperation, the Bridge Commission, the Commission on Conservation and Fishing Practices in Sandusky Bay, the Toledo-Lucas County Port Commission, the Tax and Revenue Commisssion as well as the Ohio Program Commission.

Before the 97th General Assembly there was action with reference to the Ohio State Fairgrounds Site Commission, the Legislative Research Commission, the Post-War Program Commission, the Liberian Centennial Commission, the Salary Study Commission and the Labor Regulatory Legislation Commission.

The 96th General Assembly took action with reference to the Code Revision Commission, the Library Survey Commission, The Ohio Aviation Commission, the State Records Commission, the Small Business Commission, the [fol. 47] Urban Development, Redevelopment and Slum Clearance Commission, the Veterans Program Commission, the Pension Program Commission and the Strip Mine Study Commission. It therefore would appear that the Un-American Activities Commission was legally alive on April 1, 1952 and that the adjournment of the General Assembly had no effect whatever on its life. See 49 American Jurisprudence, Page 258.

The second ground that the said Commission was not fulfilling a legislative function simply falls in face of the express terms of the Constitutional Amendment of 1912. As to the third ground that the said "Commission" is not within the scope of the statute relating to a legislative "committee," it has been heretofore pointed out that the terms are practically interchangable. As to the argument that the Commission was given unconstitutional powers, the answer is that the Commission was given the express powers provided in the 1912 Constitutional Amendment. Further, the argument that the Commission was not given power to punish witnesses it should be pointed out that

this proceeding was initiated by the Grand Jury of Franklin County, operating as above pointed out, on power conferred upon it. As to the branches of the fourth ground that the Commission is not a commission of Ohio because it does not come within "the Constitutional definition of [fol. 48] Commission," defendants have not pointed out the particular part of the Constitution that defines "Commissions". This Court has no knowledge of such a definition and therefore, cannot apply it. As to the membership of the said Commission it can only be said that it is that which is contemplated by the General Assembly. As to the argument that no Commission can be given power to cite contumacious witnesses for contempt it need only be said that the action in this case is brought by the Grand Jury and is not dependent upon the citation by the said Commission.

As to the power to function between sessions of the General Assembly see Parker v. Riley, 18 California (2D) Adv. Page 57 113 Pacific (2D) 873, referred to in the brief on behalf of the State.

Most of the other grounds set forth *are* in the brief of the defendants involve a complete or partial denial or some material allegation in the indictment, or make reference to some fact alleged to exist, but being found outside the record. Neither can avail for the purpose of considering and deciding a demurrer. For example, the argument listed under the topic B that the indictments show on their face "that the defendants did not wilfully refuse to answer pertinent questions" can have no validity in view of the express language of the indictment *that* "that the defend-[fol. 49] ant did unlawfully and wilfully refuse to answer the following questions pertinent to the matter under inquiry."

The same is true as to whether or not directions to answer were given. The doing or failing to do the act is punishable if proven in a proper case. There is no requirement under the provisions of the statute in this case namely Section 2917.42 Revised Code that a direction to answer be given.

The arguments listed under C have the same frailty as many of those listed under B in defendants' demurrer and arguments in defendants' consolidated brief. Again in C,

defendant argues that the indictments show on their face "that defendants did not wilfully refuse to answer questions". This of course is not proper when the indictment contains the direct allegation that they did wilfully refuse to answer. Nor is it proper to argue that defendants made claim to privilege against self incrimination and such claims were accepted by the Commission as this is outside of the record and not proper for purpose of deciding a demurrer.

Reference is made to the Fifth Amendment to the Constitution of the United States. Suffice it to say that the first ten amendments to the Constitution of the United [fol. 50] States were enacted as limitations upon the powers of the Federal Government and its agencies and were not limitations upon the powers of the State or its agencies.

Further, the argument of possible self incrimination or answers that have a tendency so to do is fully met by the provisions of Section 101.44 (Section 60 General Code). This section provides as follows:

> "Except a person who, in writing, requests permission to appear before a committee or sub-committee of the General Assembly, or of either House thereof, or who, in writing, waives the rights, privileges and immunities granted by this section, the testimony of a witness examined before a committee or sub-committee shall not be used as evidence in a criminal proceeding against such witness nor shall the person be prosecuted or subjected to a penalty or a forfeiture on account of a transaction, matter, or thing, concerning which he testifies or produces evidence. This section does not exempt a witness from the penalties for perjury."

It is clear therefore, that the provision of Section 101.44 supra grant immunity to the witnesses as to any incriminating matter concerning which they might testify had they answered the questions propounded to them by the said Commission.

There may be one exception to this as one of the questions appeared to deal with whether or not false testimony had been given at a previous time before a Grand Jury of this County. It can be safely left to the Judge who tries

[fol. 51] this case properly to apply whatever interpretation be required to make fully effective the protection contemplated by the provisions of Section 10, Article I, of the Ohio constitution, should it develop upon consideration of the evidence that the immunity provided by Section 101.44, R. C. is not broad enough to cover a particular situation.

By way of summary, we conclude:

1. For many years prior to the approval of the constitutional amendments of 1912 (since 1851), the state constitution granted only limited powers to investigating committees of the senate and House of Representatives. During that period, Section 8, Article II of the constitution, so far as pertinent here, provided as follows:

> "Each house (of the state legislature) * * * shall choose its own officers, may determine its own rules of proceeding, punish its members * * * excel a member * * * and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business."

2. Twice in the six year period just prior to 1912, the legislature through the medium of committees sought to investigate graft, corruption, illegal use of public funds and other abuses alleged to exist in local government and each time the investigation was halted by an adverse decision of the supreme court of Ohio, based upon the lack of any [fol. 52] grant of power to the legislature for such committee investigations. In 1906, the state senate by resolution, created a committee headed by Senator John C. Drake, which came to be known as the Drake Investigating Committee. Its work was halted when the supreme court refused to mandamus payment of a bill incurred by the committee. (See State ex rel v. Guilbert, Auditor, 75 Ohio State, p. 1) In 1908, a joint committee of senators and state representatives was created by a joint resolution for the purpose of resuming the same investigation. It came to an end by an adverse court decision the same year was handed down by the Hamilton County Circuit Court, affirmed by the supreme court of Ohio. (See State ex rel v. Gayman, 11 Ohio Cir. Ct. (n.s.) 257, affirmed 79 Ohio State, p. 444)

3. The court in the 1906 decision (see Guilbert case, supra) pointed out that the constitution prior to 1851 had granted very broad powers to the legislature, but that in the constitutional revision of 1851, which was still unchanged in 1906, such powers were sharply curtailed. Prior to 1851, each house of the legislature had been granted, in addition to many specific grants of power, "all other powers necessary for a branch of the legislature of a free and independent state," while in 1851, this phrase was rewritten [fol. 53] to read "all other powers, necessary to provide for its safety, and the undisturbed transaction of its business." (See Constitution of 1802, Section 11, Article I, and Constitution of 1851, Section 8, Article II). Davis, J. in the Guilbert case, supra, after pointing out the change, observed that courts must give full effect to such a change.

4. The debates of the 1912 constitutional convention disclose that the amendment which was proposed to be made (and which later was overwhelmingly adopted) in Section 8, Article II, was drawn for the express purpose of giving to each house of the legislature the powers which the supreme court found they lacked at the time of the Guilbert decision, supra. This proposal carried unanimously and without a dissenting vote each of the four times the convention voted on it. When submitted to the electors of the state in 1912, the proposal to amend Section 8, Article II, carried by a two to one favorable vote, and received the next highest majority of any of the 41 proposals submitted in 1912.

5. As amended in 1912 and in effect at all times since, Section 8, Article II, so far as here pertinent, is as follows:

> [fol. 54] "Each house (of the state legislature) • • • shall choose its own officers, may determine its own rules of proceeding, punish its members • • • expel a member • • • and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, *and to obtain, through committees otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.*" (Emphasis added; new matter italics)

6. By virtue of the 1912 amendment of Section 8, Article II, of the constitution, new powers were given to the two houses of the legislature which because of other provisions of the constitution are most effectively used when exercised by both houses in the form of legislation. Such new powers include power to "obtain through committees or otherwise, information affecting legislative action". The field is further broadened so that such inquiries or investigations may deal with legislative matters either "under consideration," that is, presently pending, or "in contemplation," that is, having to do with legislative action in the future.

7. So broad is the above referred to grant of power that it is only limited by other provisions found necessarily in conflict therewith, the framers having used the language "shall have all powers necessary" to enable them to obtain the needed information and further granting the power "to [fol. 55] enforce the attendance and testimony of witnesses and the production of books and papers."

8. The legislative exercise of the powers above referred to in the form of legislation passed in conformity to all of the rules prescribed by the constitution, namely by an act of the two houses of the legislature is the proper manner of giving effect to and making available for use the powers granted under Section 8, Article II.

9. While the legislation creating the Un-American Activities Commission (A.S.B. 358, 99th General Assembly, 124 Ohio Laws, p. 795) refers to it as a "commission" it also places it in the legislative branch of the government so that although the section of the criminal law punishing witnesses for contempt (Sec. 2917.42, R.C.) refers to "a standing or select committee of the general assembly" a consideration of the meaning of "commission" and "committee" indicates that, as used here they are of the same meaning.

10. The statutes of this state grant immunity from criminal prosecution to witnesses testifying before legislative committees and such witnesses, being fully protected from future criminal prosecution concerning or arising from matters about which they are questioned by such committees may not avail themselves of the protection given [fol. 56] by Section 10, Article I, the constitution, providing that "No person shall be compelled in any criminal case, to be a witness against himself." Obviously, if there can't

be a future criminal case based on such witnesses' testimony, he could not be testifying against himself. (See Section 101.44, R.C. or Section 60, G.C. granting immunity)

11. The first 10 amendments to the Constitution of the United States, including of course, the Fifth Amendment thereto, relied upon by the defendants in this case, were enacted for the purpose of placing limitations and restrictions upon the federal government and its agencies and are not limitations upon the state governments or its agencies and hence are not available to the defendants in these cases.

12. The purposes of the creation of the Ohio Un-American Activities Commission are within the powers granted to the houses of the General Assembly under Section 8, Article II, of the constitution and the carrying out of the mandate given to such commission by the legislature can not be left to the whim or caprice of witnesses called before such commission.

[fol. 57] For the reasons above set forth, each demurrer of each defendant, in the opinion of the court is not well founded and should be overruled. Exceptions to this ruling will be noted as to each defendant.

William C. Bryant, Judge.

[fol. 58] IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO, CRIMINAL DIVISION

No. 32836

THE STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

Excerpts from Bill of Exceptions

[fols. 58a-61] PROCEEDINGS AND TESTIMONY

Before Honorable Myron B. Gessaman, Judge, a jury having been waived, on November 16, 1953.

[fol. 62] GORDON RENNER, called as a witness on behalf of the plaintiff, the State of Ohio, being first duly sworn, testified as follows:

Examined by Mr. Ramey:

Q. Will you state your name, please?
A. Gordon Renner.
Q. Where do you live, Mr. Renner?
A. Cincinnati, Ohio.
Q. And what is your business or occupation?
A. Attorney-at-law.
Q. Directing your attention to April 1, of 1952, and for some time prior thereto, did you hold any other office in the State of Ohio, elective or appointive?
A. I was a member of the General Assembly at that time.
Q. And as a member of the General Assembly, what committees did you belong to?
A. Well, at that time I was Speaker of the House, and I was ex-officio a member of all standing committees.
Q. As Speaker of the House of Representatives, you, of course, are familiar with Section 76-28?
A. I am.
Q. Now Section 103.31 of the General Code?
A. I am.
Q. I will ask you whether or not as Speaker of the House [fol. 63] of Representatives, some time prior to April of

1952, you had occasion to appoint members of a Commission known as the Ohio Un-American Activities Commission?

A. Prior to April, 1952?

Q. Yes.

A. Yes, I did. The Act which created that Un-American Activities Committee or Commission directed appointees from the House and the Senate, to be named by the Speaker of the House, and the President Pro Tem of the Senate respectively, and as Speaker of the House, I appointed the House members of that Commission.

Q. Could you recall for us at the moment the names of those members of the House of Representatives of the State of Ohio that you appointed to that Commission pursuant to that?

A. Yes. It is my recollection that there were five House Members, plus the Speaker, who was named by statute to be a member. The five House Members whom I appointed were Samuel Devine of Columbus, Kenneth Robinson of Marion, Louis Schneider of Cincinnati, Robert Reider of Port Clinton, Ottawa County, and John Corrigan, of Cleveland.

Q. Subsequent to their appointment, I will ask you whether or not you attended an organization meeting of that group which was nominated or named to the Commission?

A. Yes, I did. I believe a day or two after the effective date of the Act, which created the Commission, an organiza- [fol. 64] tion meeting was called of the members appointed by the Speaker and the President Pro Tem of the Senate. The meeting was held in the office of the Speaker at the House of Representatives. And that date was somewhere around the middle of September; I believe the last effective date of all legislation of that session was September 19th, so it might have been that date, or two or three days before.

Q. In what year?

A. 1951.

Q. Were you present at that meeting?

A. Yes, I was.

Q. Are you able to state to this Court at this time who was selected as Chairman of that Ohio Un-American Activities Committee thus constituted and thus appointed?

A. I was elected Chairman of the Commission.

Q. Did you elect a Secretary?

A. Yes, Samuel Devine was elected Secretary.

Q. Then what happened; what was the next official act of your Committee after its organization and the selection of a Chairman and Secretary?

A. Well, it became necessary to organize along routine lines by way of providing office equipment and telephones, and acquiring files that had been in the possession of a temporary committee previously formed and acting from about March of 1951 up until the date of the sine die adjournment of the Legislature. That was a joint Committee [fol. 65] set up by resolution of the two Houses, and this Commission prepared to take over their records and that work.

Q. Did the Commission as then constituted have any other employes other than members of the Committee?

A. Yes, it employed counsel and it employed an investigator. It employed a research man, who may have had the title of Director, and it employed a Secretary-Stenographer.

Q. You may state who became Counsel for the Commission, Mr. Renner?

A. Sidney Isaacs, an attorney-at-law of Cincinnati, became counsel.

Q. Subsequent, therefore, to the organization meeting of this Commission, and your routine preparations for work through the employment of counsel and others, then what did the Committee do?

A. Well, the personnel of the Commission itself, the members of the Commission coincided precisely with the membership of the Committee that had been its antecedent, and the groundwork was, therefore, completed. It was necessary simply to determine certain policies as to what would be the direction of our investgation, as to whether or not it was our wish to rig up for the carrying out of that policy, and advice with respect to the formulation upon it was received by counsel and considered by the members of the Commission. There were such routine things as the [fol. 66] adoption of rules for the government of the Commission itself, that is, the meetings and its activities, and it became necessary to consider limitations of a budget, and to make plans within the limitations of a budget.

Q. I will ask you if it is not true that the statute

creating the Commission prescribed the general purposes for which you were to exist as a Commission?

A. It did, yes.

Q. That is, to investigate and to analyze your findings in accordance with the language of that statute?

A. That is correct.

Q. And such language which has been included in the indictment here, and the language read just a few minutes ago by the Prosecutor, Frank Kearns, in his opening statement?

A. Yes.

Q. So that the general line of your work was laid out by that statute, is that not true?

A. That is correct.

Q. Now, you referred to rules adopted in the organization of your committee, and the drafting of rules. Now, I will ask you whether or not in the taking of your testimony of witnesses before your Commission, what rules were followed with respect to the taking of the evidence?

A. We did not set up any rules or formulate or adopt any policy with respect to the conduct of the hearings. I [fol. 67] think all of the rules that we set up are the rules customarily adopted by a commission at the commencement of its operation, among such things as determining when the regular meeting of the Commission will be held; what shall constitute a quorum, and some formal matters of that sort. No fixed rules for the conduct of hearings were determined at any time or adopted by the Commission. Later, it attempted to create a practice and custom based upon fairness primarily, and upon experience as we went along.

Q. That would be, then, rules of procedures in your own meetings?

A. That is right.

Q. To be specific, and to make clear what I am getting at, in the adoption of the rules of this Committee you made no changes or attempted to make no changes in conducting the hearings; that is, they were held according to the laws of evidence of the State of Ohio in question and answer processes?

A. Well, may I say we attempted to, as nearly as we could. I would like to point out that the members of the Commission who were lawyers were lawyers by chance.

There was no requirement that the Commission itself or its Chairman be an attorney at law, and such practices as were had by the Chairman would be comparable to hearings conducted by other boards or commissions for investigative purposes.

Q. Did you have occasion, then, subsequent to the [fol. 68] organization of this Commission to hold hearings and to hear witnesses?

A. Many hearings were held.

Q. When did you start holding hearings of the Ohio Un-American Activities Commission, if you recall, approximately?

A. Hearings, of course, had been held during April and May of 1951, by the joint Committee, which preceded us. Our Act, or the Act that created our Commission, did not become effective until mid-September of 1951, and after that I believe considerable time was taken by the staff for field work for investigation before an opportunity was made to have our first public hearing. And it is my recollection—I would have to go back to the minutes of the Commission to make certain, but I believe that it was in January 1952.

Q. That you started holding hearings?

A. That we had our first public hearing under the Commission organized in September of the previous year.

Q. Directing your attention to April 1, of 1952, I will ask you whether or not your Commission, the Ohio Un-American Activities Commission, was in session and holding public hearings?

A. Yes, it was.

Q. And as Chairman and a member of the Ohio Un-American Activities Commission, I will ask you who issued subpoenas for witnesses to appear before the Commission? [fol. 69] A. The Chairman. I myself issued the subpoenas in accordance with law.

Q. Do you recall issuing a subpoena or causing to be issued a subpoena calling for Anna H. Morgan?

A. Yes, I did.

Q. To appear before your Commission?

A. Yes, I do.

[fol. 70] Q. Now, Mr. Renner, you may state whether or not Anna Morgan appeared before the Ohio Un-American Activities Commission on April 1, at or about 10:00 o'clock?

A. She did.

Q. In room 8 of the House of Representatives?

A. Yes.

[fol. 71] The Court: On April 1, 1952?

Mr. Ramey: 1952.

The Court: Is that correct, Mr. Renner?

The Witness: That is correct.

Q. Do you know Anna Morgan?

A. I hadn't seen her previous to that time.

Q. You did see her there at the hearing?

A. Oh, yes.

Q. Do you know whether or not Anna Morgan was the Anna Morgan that appeared in response to this subpoena?

A. She so stated, as I recall.

Q. She stated she was Anna Morgan?

A. She stated, as I recall, that she was Anna Morgan, and appeared in response to the subpoena.

Q. Is the lady who appeared in response to this subpoena present in this courtroom at this time?

A. Yes, I think she sits right there with her counsel.

Q. Now, were you present during the conduct of the hearing that morning, on April 1st?

A. Yes, I was.

Q. Who presided at that hearing?

A. I presided.

Q. Was there a quorum of your Commission present at that time?

A. There was, and the minutes will show who constituted [fol. 72] the quorum.

Q. Were the witnesses sworn when brought before this Commission?

A. All witnesses were sworn, including Anna Morgan.

Q. Anna Morgan was sworn?

A. Yes.

Q. By whom? Who administered the oath to Anna Morgan?

A. I administered the oath as Chairman of the Commission.

Q. Were you present during all of the questioning?

A. Was I present?

Q. Yes.

A. Yes, I was present during the entire questioning.

Q. Who conducted the interrogattion of the witness, Anna Morgan?

A. It has been the practice of the Commission for the counsel of the Commission to present most of the questions to the witnesses. After he has made—after he has completed his questioning, the Chairman would then inquire of the members of the Commission if they have any further questions to ask of the witness.

Q. So that the Commission's counsel, Mr. Sidney Isaacs, conducted the investigation along with anyone else of the Commission who wished to ask questions?

A. That is correct.

Q. Did you ask any questions of the witness, Anna Morgan?

[fol. 73] A. I probably did. I usually do.

Q. Did you get answers?

A. I don't recall. I would have to go to the record. I think in some cases I got answers and possibly in others I didn't.

Q. Do you recall whether or not the witness, Anna Morgan, answered all questions propounded to her by members of the Committee?

A. Oh, I recall very definitely that she didn't.

[fol. 74] Q. Do you recall from your own recollection without necessarily attempting a verbatim repetition of that conversation, in a general way, what grounds were given by the witness for her refusal to answer when she did so refuse?

A. As far as I recall, in every instance, her refusal to answer was based on the protection of the Fifth Amendment to the Federal Constitution.

[fol. 75] Q. This date, then, April 1, 1952, at 10:00 A.M., was the first time she had ever been called?

A. That is correct.

Q. And she was never recalled?

A. That is correct.

Q. After approximately forty-five minutes of questioning, by counsel for the Commission, and such members of the Commission as cared to, was the witness excused?

A. Occasionally we excused a witness at the conclusion of his testimony and sometimes we requested a witness to stay until the hearing had adjourned that day, perhaps at

mid-day, or at the end of the day. I have no definite recollection whether Mrs. Morgan was requested to remain until the recess at the moment. I wouldn't say. But whenever she left, she was excused.

Q. That is at the end of your session?

A. Either at the end of her testimony or at the end of that day's session.

Q. Then I will ask you whether or not the Ohio Un-American Activities Commission subsequent to the release of Anna Morgan as a witness that day took any further action with respect to the witness, Anna Morgan?

A. Yes. The members of the Commission met—I don't recall at the moment whether it was the same day or at a subsequent meeting; I am inclined to think it was at the [fol. 76] next meeting of the Commission, after the printing of the testimony was available; they met to consider the answers of Mrs. Morgan to the questions and whether in their opinion contempt action might be sought. Upon such consideration, the proper members of the Commission being present, as specified in the statute, there was a unanimous opinion that the Commission would seek an indictment or prosecution of Mrs. Morgan as for contempt.

Q. Did the Commission do anything further with respect to the transcript, or make any referral to it to anyone?

A. Pursuant to the statute, the action of the members of the Commission present at that time was reduced to writing, either in the form of a motion or resolution, requesting the Chairman to proceed in accordance with the statute to bring the matter to the attention of the Prosecutor with the request that he proceed.

[fol. 77] Q. Do you, of your own knowledge, at this time, know the name of the individual person who appeared and was present and served as the official stenographer for your Commission?

A. I understood it to be Mr. Hammock.

[fol. 78] Q. And he was present and took the questions down whether they were asked by counsel or by Commission members?

A. That is correct.

Q. Did you, as Chairman of the Ohio Un-American Activities Commission cause a transcript of those notes to be made?

[fols. 79-80] A. Yes, sir.

The Court: Was that done on April 1, 1952, when Mrs. Morgan was before your Commission, Mr. Renner?

[fols. 81-83] Q. Now, where was this hearing held?

A. In a Committee Room on the third floor of the State House, on the side of the House of Representatives.

Q. That is in the City of Columbus and Franklin County?

A. It is in the city of Columbus. It is known as the Taxation Committee Room at the House. It has a number, but I don't recall it.

The Court: It is also in Franklin County?

The Witness: In Franklin County.

[fol. 84] Cross-Examination.

By Mrs. Ginger:

Q. Do you recall whether your custom was to call several witnesses for the same hour so that, for example, Mrs. Morgan would have been present from the beginning of the hearing on April 1st, even though she was not necessarily the first witness on that day?

A. Yes, that was our practice to call all witnesses for a given day, or at least a given half day, at the same hour.

Q. And do you recall that Mrs. Morgan was present during the testimony of the first witness on April 1st, that is, Robert E. Lee Terrill?

The Court: What was that name?

Mrs. Ginger: Robert E. Lee Terrill.

[fol. 85] The Witness: No, I have no independent recollection of that. As a matter of fact, I thought that perhaps Mrs. Morgan was the first witness.

Q. And if the record or the transcript of that hearing were to show that she had been the second witness, then you would be prepared to state that she had been present from the beginning of the hearing, so that she would have been present during the testimony of the first witness?

A. I would state that that is undoubtedly true, yes.

[fol. 86] SAMUEL L. DEVINE, called as a witness on behalf of the plaintiff, the State of Ohio, being first duly sworn, testified as follows:

Examined by Mr. Ramey:

Q. Will you state your name, please?
A. Samuel L. Devine.
Q. Where do you live, Mr. Devine?
A. 195 North Roosevelt, Columbus.
Q. What is your business or occupation?
A. Attorney.
Q. Do you hold any other office, elective, appointive, or otherwise, in the State Government?
A. I am a member of the Ohio General Assembly.
Q. Directing your attention to the year 1951, I will ask you whether or not you were a member of the State Legislature in 1951?
A. I was.
Q. That would be the House of Representatives?
A. Yes, sir.
Q. What Committees were you a member of, while you were a member of the Legislature in 1951?
A. I was a member of the Highway Committee, Commerce and Transportation Committee, and the Ohio Un-American Activities Committee.
[fol. 87-88] Q. And that Committee was later supplanted and the work of that Committee continued by this Committee, was it not?
A. It became a Commission by virtue of a Senate Bill.
Q. What was the effective date of the Senate Bill creating the Commission to continue the work of that Committee, if you recall, approximately?
A. I don't recall the effective date of the Act.
Q. To refresh your recollection, could it possibly be September 19, 1951, or mid-September of 1951?
A. Yes, I believe that is right. It was ninety days after the bill was passed. Without an emergency clause on it, it would be about September 19, 1951.
Q. Were you also a member of the Commission created by that Act in 1951?
A. Yes, sir.
Q. And is that an appointive position, Mr. Devine?

A. The members from the House are appointed by the Speaker of the House and the members of the Senate are appointed by the President Pro Tem of the Senate.

Q. And were you appointed by the Speaker of the House?

A. The Speaker at that time was Gordon Renner, and he appointed me as one of the members of the House on the Commission.

[fol. 89] Cross-examination.

By Mrs. Ginger:

Q. Mr. Devine, was the General Assembly of Ohio in session at the time of the April 1, 1952, hearing of the Ohio Un-American Activities Commission?

A. No, that was after the adjournment date of the General Assembly.

Q. What sort of an adjournment was that of the General Assembly?

A. Sine die adjournment.

Q. If the records show the 19th day of June, 1951, as the date of the adjournment sine die of the General Assembly, would that sound correct to you?

A. I believe that is correct, Mrs. Ginger.

Q. Could you tell me whether any bills were pending before the General Assembly of Ohio at the time of the hearing of Mrs. Morgan on April 1, 1952?

A. No, no bills were pending after the sine die adjournment.

Q. And had any bills been proposed to the following session of the General Assembly which had not yet been elected and which had not yet formed at that time?

[fol. 90] Mr. Ramey: Obviously there could be no bills before a body that has not yet sat.

The Witness: I believe your question, Mrs. Ginger, is whether any proposed bills were offered to the General [fol. 91] Asembly that was to come into existence, the 100th General Assembly? I will answer that this way. I will say no, and explain it that the Commission made recommendations of legislation, such recommendations to be presented to the 100th General Assembly. However, the recommenda-

tions were not made in the form of bills, but actually in the form of a report of the Commission.

Q. And on April 1, 1952, no recommendations had yet been made?

A. No, they had not.

Q. And none were pending in the sense of being about to be made for a matter of days or even weeks?

A. Not at that time.

Mrs. Ginger: Thank you.

[fol. 92] The Witness: Well, Judge, the Commission was organized for the purpose—for three purposes, in fact. One, to investigate in the State of Ohio to determine whether or not there was Communism; second, if we did find that it did exist, whether or not it constituted a danger; and third, if we did find that it existed and constituted a danger, to make recommendations to the next General Assembly legislation to cope with any situation that we found. And as a result of the investigation, and the hearings, prior to the 100th General Assembly, the report was written and recommendations were made in that report.

The Court: Well, my question was, getting back to the question, Mr. Devine, was your report based on the investigations that the Commission made, including the information secured from the hearings held prior to January 1, 1953?

The Witness: Yes.

The Court: You may proceed.

By Mrs. Ginger:

Q. Mr. Devine, when a witness was accompanied by counsel to your hearing, was that fact recorded in any way?

A. Yes, it was, and the counsel were requested to identify themselves for the reord, and it would appear in the transcript of the record as to who the counsel was, or were.

Q. So that if no statement appears in the transcript of [fols. 93-98] the hearing as to an attorney appearing with the witness, it would be accurate to state that the witness did not appear with counsel?

A. That would be accurate, yes.

[fol. 99] EDWIN H. HAMMOCK, called as a witness on behalf of the plaintiff, the State of Ohio, being first duly sworn, testified as follows:

Examined by Mr. Ramey:

[fol. 100] Q. In your business as court reporter I will ask you whether or not you have ever been employed by the Ohio Un-American Activities Commission in the capacity of a stenographer?

A. I have.

Q. I will ask you specifically whether or not you were so employed on April 1, 1952, in a public hearing being held at Columbus, Ohio, in a State House Committee room?

A. I was so employed.

Q. Did you personally make the stenographic record from which you are now testifying?

A. Yes, sir.

[fol. 101] Q. Who was present. We might start with page 1000.

A. The then Chairman of the Commission, Gordon Renner; the Vice-Chairman, at that time, Joseph Bartunek; the Secretary, Samuel Devine, all three of whom were members of the House of Representatives of the Legislature; Mr. Sidney Isaacs, counsel for the Commission, and the then Senator Leo Blackburn, and Representative John V. Corrigan.

[fol. 102] Q. Do your notes and record indicate what individual swore the witness, Anna Morgan?

A. The notes indicate that the oath was administered by the Chairman, Mr. Renner.

Q. Will you start at that point and read your stenographic record of the questions and the answers of Anna Morgan from that point to its conclusion?

A. Examination by Mr. Isaacs:

"Question. State your name, please.

"Answer: My name is Anna H. Morgan.

"Q. Where do you reside, Mrs. Morgan?"

[fol. 103] "Answer. I regret that I cannot answer your question under the Fifth Amendment of the Constitution, because to do so would give your Committee an opportunity [fol. 104] to incriminate me.

"Question. Now, Mrs. Morgan, would you explain to the Commission how revealing your address at which you were served with a subpoena by the Sheriff of Franklin County would tend to incriminate you?

"Answer. I continue to appeal under the Fifth Amendment of the Constitution of the United States that anything I might say would be used by this Committee, as I know it, to incriminate me.

"Question. Even to the point of revealing your address?

"Chairman Renner: Mrs. Morgan, are you aware of the fact that your failure to answer questions—some questions of this Commission, might also tend to put you in an embarrassing situation?"

And Mrs. Morgan said, "I still appeal under the Fifth Amendment of the Constitution and the Bill of Rights."

"Chairman Renner: I simply want to apprise you of your duties as well as your rights. Counsel may proceed."

Question by Mr. Isaacs: "Are you a citizen of the United States, Mrs. Morgan?

"Answer. I appeal under the Fifth Amendment.

"Question. You say you appeal under the Fifth Amendment?

"Answer. I continue to appeal under the Fifth Amendment, not to answer that question.

"Question. Does that mean that you refuse to answer?

[fol. 105] "Answer. I refuse to answer under the Fifth Amendment.

"Question. And by the refusal to answer under the Fifth Amendment, you say to answer would tend to incriminate you?

"Answer. Yes.

"Chairman Renner: Would you, Mrs. Morgan, be kind enough to tell the members of the Commission what the Fifth Amendment is?

"Mrs. Morgan: That is the Fifth Amendment that I am appealing under.

"Chairman Renner: Do you know what the Fifth Amendment is?

"Mrs. Morgan: It is the Fifth Amendment that I am appealing under, yes.

"Chairman Renner: You haven't answered the question.

"Mrs. Morgan: I am appealing under the Fifth Amendment.

"Question by Mr. Isaacs: How long have you been a resident of Franklin County, Mrs. Morgan?

"Answer. I continue to appeal under the Fifth Amendment.

"Question. Is it your belief, Mrs. Morgan, that to answer how long you have been a resident of Franklin County would make you guilty of some crime?

"Answer. I appeal under the Fifth Amendment.

"Question. Now, when you say you appeal under the [fol. 106] Fifth Amendment, you mean you refuse to answer?

"Answer. I refuse to answer a question under the Fifth Amendment unless what I say might tend to incriminate me.

"Question. Where are you employed, Mrs. Morgan?

"Answer. I still appeal under the Fifth Amendment.

"Question. Do I understand you are refusing to answer?

"Answer. I refuse and I appeal under the Fifth Amendment.

"Question. Mrs. Morgan, are you now or have you ever been a member of the Communist Party?"

"Answer. I continue to appeal under the Fifth Amendment.

"Chairman Renner: You refuse to answer?

"Mrs. Morgan: I refuse to answer.

"Questions by Mr. Isaacs: I will ask you, Mrs. Morgan, if it is not a fact that during the entire time of your residence in Franklin County, Ohio, you have been a member and an active member of the Communist Party?

"Answer. I appeal under the Fifth Amendment to answer any of your questions.

"Question. Do you refuse to answer that question?

"Answer. I refuse.

"Question. Mrs. Morgan, I will ask you if it is not a fact that as of January 9, 1949, you were finance director of the Communist Party of Franklin County?

"Answer. I refuse to answer under the Fifth Amendment.

[fol. 107] "Question. I will ask you if on that date you didn't take over the full responsibilty as co-chairman of the Franklin County Communist Party, directing registration and securing new recruits?

"Answer. I refuse to answer under the Fifth Amendment, sir.

"Question. I will ask you if in February, 1949, in your capacity as executive secretary of the Communist Party, of Franklin County, you reported that you had recently attended the Ruthenberg dinner at Cleveland, Ohio?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Do you report to the Franklin County Section of the Communist Party at the time that Martin Chancey, the Ohio Communist Party secretary, had emphasized that the fund drive in Franklin County being conducted at that time must go over the top with the point that if members had to borrow the money to meet the quota, they must do so, and the quota would not be reduced, but might be increased ten per cent? Do you recall making that report for the Franklin County Communist Section?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Mrs. Morgan, I will ask you if during that time you were not the paid Communist organizer for the Communist Party in Franklin County, having been promised $35. a week for that duty?

[fol. 108] "Answer. I refuse to answer under the Fifth Amendment.

"Chairman Renner: Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.

"Mrs. Morgan: Yes.

"Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed.

"Questions by Mr. Isaacs: I will ask you, Mrs. Morgan, if it is not a fact that on April 24, 1949, you attended a Marxist class held by the Franklin County Communist Party at the home of Manny Shore, at 454 South Wayne Avenue, at which time you reported that you had received no pay for eight weeks, at $35 a week, from the Communist Party?

"Answer. I refuse to answer on the ground that to do so would incriminate me.

"Question. I will ask you, Mrs. Morgan, if it is not a fact that on May 9, 1949, at a regular meeting of the Communist Party of Franklin County you announced that you and your husband might have to leave Columbus because your salary had not been paid and your husband at that time had no job?

"Answer. I refuse to answer on the grounds that anything I might say might tend to incriminate me under the Fifth Amendment.

"Question. I will ask you, Mrs. Morgan, if it is not a [fol. 109] fact that you were a delegate to the Franklin County Communist Party convention held in Columbus, Ohio, from June 6th to 13, 1949?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if it is not a fact that on the 5th day of June, immediately prior to that Convention, you were elected executive secretary of the Franklin County Communist Party?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if it is not a fact that on the 26th day of June a Communist Party meeting was held in your home?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if it is not a fact that at that meeting held in your home Robert Campbell, a state Communist Party functionary, spoke on the subject of white Chauvanism, and stated there were two parties in Columbus, a white Communist Party in the north end and a negro Communist Party in the south end?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you, Mrs. Morgan, if it is not a fact that on August 12, 1949, the executive committee of the Franklin County Communist Party met in your home?

"Answer. I refuse to answer.

[fol. 110] "Question. I will ask you if it not a fact that at that meeting Robert Gunkle was introduced as the new party organizer for Franklin County?

"Answer. I refuse to answer on the ground that to do so might tend to incriminate me under the Fifth Amendment.

"Question. I will ask you, Mrs. Morgan, if it is not a fact that a Communist Party meeting was held in your home on September 16, 1949?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if the principal item of discussion at that meeting held in your home was not the fact that Robert Gunkle had left Columbus, Ohio, without notifying the State Committee of the Communist Party?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. And there was discussion as to who would take his place as his successor?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if it is not true in February of 1950 Arthur Rappeport was appointed to succeed Robert Gunkle and he and his wife resided in your home?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I ask you if it is not a fact during that period of time your home was not actually the Communist Party Headquarters for Franklin County?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I ask you if it is not a fact on the second day [fol. 111] of May, 1950, a Communist Party May Day meeting was held in your home?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if it is not a fact that at that meeting Arnold Johnson was scheduled to speak, had to return to New York when it appeared that Eugene Dennis might have to go to jail, and Frank Hashmall was the substitute speaker?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Mrs. Morgan, have you ever been employed at the American Zinc Oxide Company?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Isn't it a fact, Mrs. Morgan, that you were arrested under the name of Catherine O'Rourke for illegal picketing during a strike at the ASO plant?

"Answer. I refuse to answer under the Fifth Amendment.

The Court: Pardon me just a minute. In your notes, could that not be "AZO plant"?

The Witness: Yes, sir, that is right, AZO.

The Court: All right.

The Witness: (Continuing) "Answer. I refuse to answer under the Fifth Amendment.

"Question. Isn't it a fact that as of today you are in charge of the activities of the Communist Party of Franklin County?

[fol. 112] "Answer. I refuse to answer under the Fifth Amendment.

"Question. Mrs. Morgan, I will ask you if you are not one of the four Ohio sponsors of the petition, 'We charge genocide'?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you, Mrs. Morgan, if this is not a petition presented to the United Nations alleging that as the official and studied policy of the United States Government to exterminate the Negro race in the United States?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. I will ask you if this is not a publication of the Civil Rights Congress?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Are you a member of the Civil Rights Congress?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Are you aware of the fact that the Civil Rights Congress has been cited as both a subversive and Communist organization by the attorney general of the United States?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Is it not a fact, Mrs. Morgan, that you are an active member of the Communist Party in Franklin County at the present time?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Would you tell us, Mrs. Morgan, where you [fol. 113] resided before you came to Franklin County?

"Answer. I refuse to answer under the Fifth Amendment.

"Question. Is it not a fact that you were active in Communist Party affairs in Champaign, Illinois, prior to coming to Franklin County?

"Answer. I refuse to answer.

"Chairman Renner: Do any members of the Commission have questions to ask of Mrs. Morgan? Mr. Bartunek."

"Question by Mr. Bartunek: "Mrs. Morgan, is this the statement that you brought to present before the Committee? Do you recognize this statement?

"Chairman Renner: Mrs. Morgan, is this the statement that you presented?

"Mrs. Morgan: I refuse to answer under the Fifth Amendment.

"Mr. Bartunek: Then you have no statement to make to this Committee, is that correct?

"Mrs. Morgan: I refuse to answer under the Fifth Amendment.

Mr. Bartunek: Mr. Chairman, I suggest that that not be made a part of the record, if Mrs. Morgan doesn't want to identify it as hers.

"Chairman Renner: Mr. Bartunek, she handed this to me when she was called to the stand and said, 'This is my statement'. And I believe it should be a part of the record. [fol. 114-115] "Mr. Corrigan: Mr. Chairman, I also saw the witness hand the statement personally herself across the table. I also note that the statement contains a signature of Anna H. Morgan. The witness told us she is Anna H. Morgan, and as such, I presume signed this statement, so I think on that basis, the basis that we have witnessed her personally deliver the statement, that the statement is personally signed by Anna H. Morgan, that this witness admits

that she is Anna H. Morgan, on that basis and for that reason, I believe we should accept the statement.

[fol. 116] And the statement of Mrs. Morgan follows:

"Statement of belief by Anna H. Morgan.

"On Sunday afternoon, on returning home I found a subpoena dated March 25 stuck under the kitchen door. It was signed by one Gordon Renner, Chairman of the Ohio Un-American Committee. On Monday evening again there was introduced a subpoena, this one date March 24, signed by the same person, but not bearing the stamp of the Sheriff's office nor spelling my name correctly. This highly irregular service and slap-happy juggling of subpoenas (usually considered a serious and important document) is typical of the [fol. 117] tactics of this unconstitutional committee which breaks laws to suit themselves and harasses, intimidates, and smears citizens who dare protest corrupt political practices and the drive towards fascism. This committee was paid to investigate so-called un-American and subversive activities but in all these months it has failed to state what it considers un-American or subversive. This bi-partisan witch-hunting committee feeds anti-Red propaganda to the press without admitting that the Communist Party has never even been outlawed in the U.S.A. This Committee persecutes all those who seek to establish a third party with a peace program in the 1952 elections. Its so-called 'friendly' witnesses are the worse characters dragged from the labor movement; one witness was convicted of attempted rape; another mismanaged union frauds; another urged youths to join an organization that he represented, then he sold out to the FBI, and betrayed his young friends who followed him. Some FBI witnesses concentrate their attacks on peace workers, thereby seeking to boost the government's horrible war plans. Paid informers feed their lies to committees as long as committees feed money to them decent Americans traditionally reject all informers.

"Who am I, you may ask. I am just an average American housewife. Daughter of a deacon, I early was baptized in a Congregational Church. I accepted its teaching of the brotherhood of man for every day in the year, not just for [fol. 118] Sunday. I now present my sincere beliefs and let this committee and all interested citizens who pay this committee judge me.

"I believe in the complete economic and social equality of all races and I ask this Committee how come Ohio has never enacted FEPC legislation to guarantee those rights to its minority citizens? I feel that the American pattern of lynching negroes, of murder and genocide in general, is bringing down the hatred of the world upon us. I believe in freedom of speech as guaranteed by the Bill of Rights. I demand that traditional American soap-box right to say what I think and let the man in the street decide for himself if I am a sage or a crack-pot. I believe in clean newspaper reporting, and I denounce those who use dirty journalism to build hate between nations with lies and half truths. Since the working man gives his strength, his life, his blood, and his sweat to build up the big business machine, I believe in his right to organize unions to protect himself from those who exploit him. I protest 76 per cent of our national income being spent on war preparations while millions of our citizens lack decent houses, jobs, medical care, clothing, nourishment, education, and our old age pensioners starve. I protest American planes dropping naphlam bombs on Korean villages, making human torches of the living bodies of women, children and old men. I, who recall with horror the World War II pictures of naked dead bodies stacked like [fol. 119] corded wood in the German Concentration Camps. I protest Atty. Gen. McGrath's boast that he is rushing to completion American Concentration Camps. General Grow of the US Army in his recently exposed diary boasts: "We need not play fair . . . hit below the belt if necessary."

"I protest that this policy of hitting below the belt has passed unjust judgment on those young Jewish parents, the Rosenbergs, who are now kept in solitary confinement of death cells on framed-up charges which have never been proved. I protest a cowardly Supreme Court riding on the political coat-tails of a corrupt administration instead of defending the Constitution of the United States and the Bill of Rights against the Smith, McCarren, Taft-Hartley Acts, and all other pro-fascist legislation. I protest certain veterans' organizations hounding simple citizens while they condone films like Desert Fox, glorifying the Nazi general Rommel. These veterans have already forgotten our heroes who died to defeat fascism. As the mother

of veterans, I hate war—I know the anxiety of long nights while sons serve in foreign lands.

"I believe that peace can be achieved only through negotiation. It is futile for Americans to believe we can conquer the entire world just because we sit on the largest heap of atom bombs. As poisoned gas was outlawed after World War I, so should the atom bomb and cowardly bacteriological warfare be outlawed now.

[fol. 120] "I believe we cannot export freedom if we do not possess it. All the world watches cynically as Truman boasts of American freedom while his courts throw progressive leaders into jails as political prisoners on the framed-up testimony of discredited informers.

"I challenge this committee to examine those who are dishonest in politics; to examine those who discriminate against and hurt minority groups; to examine those heads of educational institutions who stifle freedom of speech on the campus. I call upon Gov. Lausche to witness the tactics of this committee which sneaks about to the homes, offices of factories, and institutions, calling on their victims for questioning, while endangering those victims' reputations and livelihoods. I charge that this by-partisan committee operates in an un-American and subversive manner in order to silence the independent voters during the 1952 election campaign.

"Because this committee conducts its hearings like an inquisition with no rules of evidence, its victims are denied the rights which they would have in a duly constituted court. Therefore, I must claim the protection of the fifth amendment of the Constitution of the United States and remain silent before this committee.

"Signed, Anna H. Morgan".

[fol. 121-122] The witness was excused.

Mr. Ramey: You may cross examine.

Cross-examination.

By Mrs. Ginger.

Q. Mr. Hammock, when a witness appeared with an attorney, did you record that fact in the transcript of your hearing?

A. Generally I did.

Q. Could you look back at the bottom of the transcript in this instance and inform the Court whether or not Mrs. Morgan was accompanied by an attorney?

A. According to my notes, Mrs. Morgan was not accompanied by counsel.

Q. You have taken other minutes of other hearings of this Commission?

A. Yes.

Q. Do you recall taking the minutes of the meeting of this Commission on March 31, 1952, at which time John DeLong testified before the Commission?

A. Yes, ma'am.

Q. And do you recall of your knowledge whether Mr. DeLong mentioned Anna Morgan at any time during his testimony?

[fol. 123] Mrs. Ginger: Your Honor, one of the bases on which a person uses the privilege against bearing witness against himself in answering a question to which might tend to incriminate him, is the possibility of prosecution or that his name has been used in a connection which might be a link in a chain of evidence bringing him under or within the possibility of being prosecuted. Thus, my client, Mrs. Morgan, when she went into the hearing knew that a previous witness had used her name and in connection with activities of the Communist Party, and that in view of the criminal laws of Ohio and the Smith & McCarran Acts of the United States Government, it was possible that she might incriminate herself had she answered the questions, and for this reason I want to put into the record the testimony of the entire witness who had named her in this connection. There are cases in the Federal Court which I would be able to cite to you, in which the court mentioned this specific fact as his reason for refusal——

The Court: I will overrule the objection. The witness may answer if he can.

[fol. 124] Q. Directing your attention to page 979 of the transcript, do you notice there questions and answers relating to Anna Morgan and her connection with the Communist Party, or alleged connection with the Communist Party?

A. On page 979 of the transcript, it has on it the name Anna Morgan.

Q. And the witness answered—I will read this to you, and then you see if you find it here. "Answer: She suggested that I go to the professional branch of the Communist Party. First she had to get the consent. She took me to see two members because they weren't quite as cagey as the rest of them. I told them—I told my story to them."

A. Yes, that is correct.

Q. And this was in reference to Anna Morgan, who was named at the top of the page?

A. That is right.

[fol. 125] Q. All right, let's do that this way. Doesn't the record show, at the bottom of page 989: "Question: What contact did you have after that with Anna Morgan?

"Answer: Let's see. I want to fix the dates we have in mind here."

And then going on down—I am skipping some. Doesn't the record show:

"Question: Did Anna Morgan at that time have any official title in the Communist Party here?

"Answer: I don't believe she had a title.

"Question: Was she serving in any particular capacity, or did she have any particular function?

"Answer: She seemed to be more or less at large.

"Question: Was she the organizer of the Communist [fol. 126] party at that time? Was that her capacity?

"Answer: She was helping with the organizational work, yes. She was also joining other organizations, trying to work through them, too."

We will stop at that.

A. The record so shows.

Q. Oh, there is one other question. Doesn't the record state, Mr. Hammock, at page 998:

"Question: This Anna Morgan, was she a resident of Columbus?

"Answer: Yes, she was.

"Question: Does she still live here as far as you know?

"Answer: I don't know if it is in the city limits or not. It is way up on——

"Question: Close to Westerville?

"Answer: No, on the Three C. Highway, on Cleveland Avenue."

A. The record so states.

Q. Now, Mr. Hammock, you were present throughout the hearing on April 1, 1952, is that correct?

A. Yes.

Q. And do you know of your own knowledge whether Mrs. Morgan was present throughout that hearing or at least was she present during the testimony of the witness who preceeded her on that day.

A. My impression is that she was.

[fol. 127] Q. Now, directing your attention to the testimony on page 1003, doesn't the record show this statement:

"Mr. Renner: Mr. Terrill, you have the right to refuse to answer any question, the answer to which might incriminate you. Otherwise, you are required under the law to answer the questions that are put to you by this Commission which is a Commission constituted by the people of Ohio to make a study of Communism, and un-American Activities in Ohio."

A. Yes, the record so reflects.

Q. Would you state that on page 1004 the record shows that Mr. Renner said to Mr. Terrill:

"Mr. Renner: On what ground do you refuse to answer? You are not permitted simply to refuse to answer questions put to you unless the answer might tend to incriminate you."

Mr. Kearns: I am going to object to this line of questioning, Your Honor. I don't see any relevancy in the case of Mrs. Morgan with reference to a question asked of a man or a witness named Terrill.

The Court: For what purpose do you offer it?

Mrs. Ginger: Your Honor, my client appeared without counsel at this hearing and she had sat through the testimony of the previous witness and had heard statements made by Mr. Renner, which I have just read, and Mr. Renner made some similar statements to her, and his statements indicated to her that she had a right, and I would argue when I conclude my questioning that the statements [fol. 128] made by Mr. Renner indicated to Mrs. Morgan that she had the right to refuse to answer questions that were asked of her on the basis of her privilege of self-

incrimination, and I think that those general statements by Mr. Renner, both to Mr. Terrill in her presence and to her while she was on the stand, affected her answers to the questions, and that any witness before a Commission of this kind, particularly appearing without counsel has a right to rely and has a tendency to rely upon statements made by the Chairman of the Commission as to what her rights are, and that the statements made to Mr. Terrill which were just referred to here affected her answers.

The Court: I will permit the witness to answer at this time over the objection.

[fols. 129-131] And thereupon the Plaintiff, the State of Ohio, rested.

[fol. 132] MOTION FOR DIRECTED VERDICT AND RULING THEREON

Mrs. Ginger: All right. I move for a directed verdict of acquittal and discharge of this defendant on the following grounds:

First, the State did not meet its burden of proving that the un-American Activities Commission is a Select Committee of the General Assembly. In the State's opening statement, they said that they expected the evidence to show that the un-American Activities Commission of the Legislative Branch of the Government is a Select Committee of the General Assembly of the State of Ohio, etc. This same phrasing appears in the indictment, and no evidence was adduced whatsoever indicating that it is a Select Committee of the General Assembly of the State of Ohio. On the contrary, there is nothing in the statute setting up this Committee which called it that. It isn't even called in the statute a Select Committee. Under Section 76-28, which is now Revised Code 103.31, there was established an un-American Activities Commission of the Legislative Branch of the Government. Nothing is said about it being a Select or a Standing Committee.

Now, under Section 12845 General Code; I don't have [fol. 133] the Revised Code number on that at the moment, but that is the section under which Mrs. Morgan is being tried. The Section reads:

"Whoever, having been subpoenaed or ordered to appear before either branch of the General Assembly, or before

a Standing or Select Committee of the General Assembly, or either branch thereof," and then it continues so that unless this was a Standing or a Select Committee of the General Assembly, or either branch thereof," and then it continues so that unless this was a Standing or a Select Committee of the General Assembly, or a branch of the General Assembly, then this case cannot fall under Section 12845.

. . . . . .

Mrs. Ginger: Then the second ground is that the evidence does not show that the defendant did unlawfully and wilfully refuse to answer questions contained in the counts of the indictment, but on the contrary that she did answer [fol. 134-135] every question which she was asked, and on that the law is clear, that she had the privilege to so refuse to answer, and this I will argue on another point.

Third, that the questions which now make up the counts in the indictment were not proved to be pertinent to the matter under inquiry.

Fourth, that the questions now listed as counts in the indictment were not proved to be within the power of the Commission and Legislature, or as a part of the Legislative Branch of the Government, to ask. That is, it was not proved that the Commission had the power to ask these questions. Lastly, that it was not proved that each count in the indictment stated a separate offense, but on the contrary, of the 37 counts in the indictment all of them can be directed to three questions, and that the others were mere repetition.

On these grounds I strongly urge my motion for a directed verdict of acquittal and ask that I be given an opportunity to submit a brief to support these points.

The Court: As the court has indicated, the ruling will be reserved and at the conclusion of the testimony counsel may argue it either orally or we will consider the submission of briefs at that time. Now, you may call your first witness on behalf of the defendant.

Mrs. Ginger: Your Honor, the defense rests.

[fol. 136] And thereupon, briefs were filed by counsel for the Defendant, Anna H. Morgan, and by counsel, for the State of Ohio, and after due consideration, the Court rendered its decision in writing, copies of which were furnished

to counsel, and which said decision will be found among the papers in this cause.

And thereupon, to-wit, on May 3, 1954, the defendant, Anna H. Morgan, and counsel representing her for the purpose of her appearance before the Court at this time, appeared in open court for sentence upon said finding, order and decree, and the following proceedings were had:

[fol. 137] IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

No. 32835

THE STATE OF OHIO, Plaintiff,

vs.

OSCAR SMILACK, Defendant

No. 32836

THE STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

Proceedings Before Hon. Myron B. Gessaman, Judge, on Monday Morning, May 3, 1954.

APPEARANCES:

. . . . . .

Mr. Jack B. Dworken, appearing on behalf of the Defendant, Anna H. Morgan, on behalf of her counsel, Ann Fagan Ginger.

. . . . . .

[fol. 138-141] VERDICT

The Court: The cases now before the court were heard by this court, a jury having been waived on each case, briefs have been submitted, the court has considered the briefs in both cases, and in the case of the State of Ohio vs. Anna H. Morgan the court sustains the motion to dis-

miss counts 2, 29 and 35, and also sustains the motion to dismiss counts 7 and 36; the court finds the defendant guilty as charged on the remaining counts.

[fols. 142-143] Mr. Dworken: On behalf of Mrs. Morgan, Your Honor, I don't know much about it, except all I can say is that I fear for the United States of America, if somebody who has some thoughts bad, good or indifferent, that a little lady like Mrs. Morgan, or a man like Mr. Smilack can in any way upset our great country. I say from what I have known about Mrs. Morgan, from what has been told to me, she is just an ordinary housewife, I don't think she has any prison record, she has never been in difficulty before. Inasmuch as I understand both of these cases are going to be taken to the Court of Appeals, I feel something should be done that is favorable to her as much as possible.

[fols. 144-149] SENTENCE

The Court: The sentence of the court is you be fined the sum of $100.00 on each count, but it is not the intention of the court to attempt to penalize anyone, the court has written the opinion in both of these cases, and will therefore suspend the fine in all but five counts. The fine will remain in counts 1, 3, 4, 5 and 6; you will have to pay the costs.

[fols. 150-159] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO, CRIMINAL DIVISION

STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

EXCERPTS FROM MEMORANDUM IN SUPPORT OF MOTION FOR DIRECTED VERDICT OF ACQUITTAL AND FINAL ARGUMENT FOR ACQUITTAL—Filed November 30, 1953

* * * * * * *

[fol. 160] 4. In this case the chairman of the Commission explicitly stated that he heard, and understood, and accepted the witness' claim of the privilege against self-incrimination:

Count 2 shows on its face that the questioner, counsel for the Commission, understood that the defendant was claiming the privilege against self-incrimination. At page 1012 of the transcript of hearing, (read into the record of this trial by State's witness Edward Hammock) Chairman Renner said to the defendant, then witness, after she had "refused to answer" count 12 "under the Fifth Amendment":

> "Chairman Renner: Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.
> "The Witness: Yes.
> "Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience."

Two recent cases decided in the Federal Court for the District of Columbia set forth "knowledge of committee chairman of witness' claim of privilege" as the test of validity of the claim.

In *U.S.* v. *Matles,* (Crim. No. 1745-50, D.C.-D.C., 1951, unreported) Judge Letts posed this question: "Did Representative Moulder [the sub-committee of one] understand the defendant's reference to the Fifth Amendment? If he did and understood that the Defendant was invoking his Constitutional privilege against self-incrimination, then nothing further was required of the defendant to make his position clear . . ."

(In view of the importance of this decision and because of its unavailability, it is included, in full, in the appendix at the end of this brief. It is copied from the appendix of the brief in support of petition for writ of certiorari filed with the United States Supreme Court in the case of *Emspak* v. *U.S.*)

In *U.S.* v. *Panzino,* (Crim. No. 1747-50, D.C.-D.C., 1951, unreported) Judge Goldsboro-gh reached the same conclusion, acquitting the defendant, who had said he was relying on the Fifth Amendment, even though there was some question as to whether he understood what the Fifth Amendment provided.

[fol. 161] 5. There can be no finding of guilt for wilful refusal to answer questions when there was no direction to answer by the chairman of the Commission and no notice given the witness that her claim of the privilege was rejected.

Judge Bryant stated, at page 35 of his opinion, that R.C. 2917.42, under which this indictment was brought, does not require a direction to answer, and that the different rule as to grand juries is based on the statutory requirement of a direction to answer, (G.C. 13436-11 and -12). But this point was not fully briefed before Judge Bryant, and therefore will be discussed here with the citation of cases not available to counsel for the defendant when the brief supporting demurrer was prepared.

The federal statute relating to contempt of Congress, (11 Stat. 155 as amended, RS 102, 2 USC 192) likewise says nothing about the requirement of a direction to answer. The language in the state and federal statutes is almost identical, the federal section reading:

> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes any default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable . . ."

Yet the cases under this federal statute have consistently held that a direction to answer must be shown in order to sustain a verdict of guilty of contempt. The case of *U.S.* v. *Browder,* (Crim. No. 1784-50, D.C.-D.C., 1951, unreported) explains this rule more fully than any of the other cases, and for that reason the opinion in this case is included in the appendix at the end of this memorandum. Judge Letts ruled that: "The Committee owed to the defendant a show of sincerity and frankness which was withheld unless indeed it acquiesced in his claim of privilege. His objections were not acted upon and he had the right to believe

that his views and explanations were acceptable to the committee."

See also *U.S.* v. *Fox* (Crim. No. 1789-50, D.C.-D.C., 1950, unreported): a witness cannot be in contempt merely by asserting the privilege against self-incrimination "because at that point the witness does not know whether the assertion will be acquiesced in or not.... He is not in contempt until it is made known to him that the tribunal overrules [fol. 162] the privilege and directs him to answer." And *U.S.* v. *Kamp*, (Crim. No. 1788-50, D.C.—D.C., Feb. 6, 1952, unreported): "The burden is on the presiding member to make clear the directions of the Committee, to consider any reasonable explanations given by the witness, and then to rule on the witness' response."

R.C. 101.44, the so-called "immunity" statute referred to by the prosecution memorandum in opposition to demurrer and by Judge Bryant (p. 36), is not operative unless the witness claimed the privilege against self-incrimination after being directed to answer a question by the chairman of the interrogating committee: *Commonwealth* v. *Richardson*, 229 Penn. St. 609 at 616 and *State* v. *Grosnickle*, 189 Wis. 17, at 26. Judge Prettyman spelled this out clearly in the federal contempt case of *May* v. *U.S.*, 175 F. 2d 994 (C.A.—D.C., 1949):

> (1001) "It is established that the constitutional privilege must be asserted before an immunity is established. To be liable to the penalties of the [contempt] statute for refusal to answer, a witness must be asked a question and must refuse to answer. Being then compelled to answer, his immunity arises. Absent refusal to answer followed by compulsion to answer, no immunity arises, either under the statutes before us or under the Constitution."

The defense knows of no case in which a witness before a state or federal legislative investigating committee was found guilty of contempt for refusal to answer a question, in the absence of a direction to answer the question by the committee chairman. The defense made a similar statement in its brief in support of a demurrer to the indictment. The prosecution countered in its brief (p. 6) with the case of *Mouser* v. *Public Utilities Commission*, 124 O.S. 425,

quoting from syllabus 1. At the time Judge Bryant prepared his opinion, this was the only information on that case available to him. However, since the filing of that opinion, counsel for the defense have obtained, from one of counsel in the *Mouser* case, excerpts from the transcript of the hearing before the Public Utilities Commission out of which the contempt citation arose. These excerpts make it clear that the witnesses were called to testify, refused to answer questions, were then ordered to answered the questions, and both the immunity statute and the statute giving the Commission power to subpoena and question witnesses were read to them. Thereafter they again refused to testify, and it was this second refusal which became the basis for the contempt action. A certified copy of the pertinent portions of that transcript are included in the appendix to this memorandum.

[fols. 163-168] IV. Motion should be granted because a guilty verdict would violate the privilege against self-incrimination and due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and article one, sections 10 and 16 of the Ohio State Constitution.

[fol. 169] APPENDIX TO MEMORANDUM

UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA

Criminal No. 1745-50

UNITED STATES OF AMERICA

v.

JAMES J. MATLES, Defendant

Before Honorable F. Dickinson Letts, District Judge of the United States District Court for the District of Columbia

OPINION OF THE COURT

Rendered Thursday, March 8, 1951

The Court is prepared to rule. What I wish now to say must not be regarded as the approval of this Court as to the manner and demeanor of the Defendant when he ap-

peared as a witness before the Congressional Subcommittee.

The Court thinks he was an obdurate witness and that he failed to show respect to the Congressional Sub-committee which the dignity of a Congressional Committee demands. Nevertheless, as I see the case, the central question is whether or not this defendant invoked his Constitutional privilege against self-incrimination. If he did that, he did it by mentioning the First and Fifth Amendments, and it would be simple enough for this Court to say that he has not invoked his privilege against self-incrimination, except for one part of the record.

As I have indicated in one other case, it seems necessary to view the questions and the responses given in the light of the setting when the questions were asked and the responses made and that includes the Committee itself.

In this case the Subcommittee was a Subcommittee of one, Representative Moulder, and it seems important, if you can, to understand the mental operations of Representative Moulder.

I think we have that when we look at one part of this record. It has been referred to by Counsel for the defendant, and it is a part of the record that I have given much thought to. The primary question is whether or not [fol. 170] this defendant made known to Representative Moulder that his refusals to answer were upon his Constitutional rights as guaranteed by the Fifth Amendment. Did Representative Moulder understand the defendant's reference to the Fifth Amendment? If he did and understood that the Defendant was invoking his Constitutional privilege against self-incrimination, then nothing further was required of the defendant to make his position clear and I am impelled to the belief that Representative Moulder did appreciate the defendant's position and the grounds upon which he purported to stand in refusing to answer the questions propounded.

I have mulled over the language which we find on page 856 of the record. Counsel for the committee propounded this question:

> "In 1933 you were an organizer for the Steel and and Metal Workers Industrial Union, were you not?" The Defendant: "My answer is the same."

Representative Moulder, who constituted the Sub-committee then inquired of the defendant:

"You refuse to answer for the reasons stated, that it violates your rights provided under the Constitution?"

To which the defendant answered: "That's right."

Representative Moulder then asked: "What are those provisions, do you know? And the defendant answered: "I believe the First and Fifth Amendments."

Representative Moulder then inquired: "In what respect do they justify your refusal to answer the question?"

And the defendant replied: "I am so advised by counsel."

At this point, Mr. Scribner, Counsel for the defendant, who was present volunteered: "I will be happy to give the basis for that if you wish, Mr. Congressman."

Now, the record indicates that the suggestion of defendant's counsel was not adopted and he was not invited to further explain the position of the defendant in relying upon the First and Fifth Amendments. That indicated to my mind that Representative Moulder understood the position of the defendant and the purport of the objections that had been made.

Upon the whole case the Court finds the defendant not guilty.

[fol. 171] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1784-50

UNITED STATES OF AMERICA,

vs.

EARL RUSSELL BROWDER, Defendant

Washington, D. C.
March 14, 1951.

The above-entitled action came on for further trial before the Honorable F. Dickinson Letts, United States District Judge, and a jury, at 10:15 o'clock a. m.

The Court: The Court is prepared to rule on the defendant's motion for judgment of acquittal.

It is charged that the defendant refused to answer the sixteen questions specified in the indictment. The defendant's responses to such questions were in some instances in the nature of objections and expressions of the defendant indicating his claim of supposed rights. The Court thinks the committee members so understood defendant's answers to such questions. A search of the record will not disclose one instance when the committee or its presiding member overruled the defendant's objections or offered to set him right if, perchance, his observations were ill founded or his position untenable in the eyes of the committee. Indeed, in large part the committee must be regarded as respecting his sincerity in the expression of his views. The Court thinks this a very considerate and proper attitude on the part of the committee. Perhaps as many as one hundred and forty or fifty questions were propounded which were fully and freely answered by the defendant without show of pique and with no attempt to evade the consequences of the information as imparted or any possible implications.

In viewing the few instances when it is said in the indictment the defendant refused to make responsive answers, it is noticed that the record reveals nothing of an obdurate nature in the manner and demeanor of the defendant. On the contrary, he made his objections in the [fol. 171a] way of observations which seemingly were acceptable to the committee, since on no such occasion was the defendant ordered or directed to make answer. It happened when one of the questions was asked the defendant was told by the interrogator that he might refuse to answer if that was his desire.

It is clear that the defendant was called as a witness on a very narrow issue at the behest of Senator McCarthy to refute the testimony of Professor Budenz. The examination was not so limited, although it is likely the interest of the majority of the committee was kept within the scope of such purpose. Simple justice and fairness require that the examination of the defendant be appraised in the light of that setting and that it be weighed as a whole and

not as unrelated pieces. The questions and answers must be seen as links in a chain. It would not become this Court nor approach our vaunted concepts of justice to submit this case to the jury on doubtful technicalities. It is revealing to note that during the course of the examination the defendant persisted in knowing the attitude of the committee concerning his position in refusing to answer the several questions with which we are now concerned. At one point in the questioning the defendant replied:

> "If you are going to make an issue of this, let's have it out as to whether I have to disclose who was present when I met with the Government delegation from China to the United Nations. If I have to testify about that before this committee I think it is a question which should be very seriously considered and the committee itself should take a position."

It is certain that the committee at no time announced its opinion or conclusion as to the merits of defendant's objections.

It is asserted that a condition of confusion and discord prevailed in the committee. As the Court sees this, it makes little or no difference what the fact is in that regard. The Court is not concerned with any controversy as to whether the labors of the committee were performed in good faith to effectuate the purposes of the investigation or whether there was a concerted purpose to whitewash persons whose names had been brought into the hearings as has been asserted. It is more pleasing to this Court that the issues here presented be determined upon the record unclouded by politics or other extrinsic considerations.

That the questions propounded by Senator Hickenlooper as set out in the various counts of the indictment are of doubtful pertinency to the subject of the authorized investigation becomes clear, when the remarks of the Senator at the close of his interrogation of the witnesses are understood:

> "These questions, Mr. Chairman, that I have asked have the utmost pertinency to the direct and [fol. 172] intimate subject matter of this resolution,

and I should be glad to go into the matter with the committee a little more in detail. I assure you they have a direct bearing."

The Court concludes that the Senator suspected that the other members of the Committee did not understand or see the relevancy of his questions. Notwithstanding his offer to explain such pertinency to the committee, the opportunity was not afforded him to reveal his purposes. It would be an unwarranted assumption to say that the witness understood what the members of the committee could not grasp and this makes more revealing the failure of the committee to rule on the defendant's objections or otherwise to enlighten him as to the pertinency of the questions and to advise him as to his obligations and his rights.

The witness informed the committee that he regarded the inquiry concerning individuals as the beginning of a fishing expedition. When under examination by Senator McMahon, the witness evinced a willingness to testify concerning the persons named by Senator Hickenlooper and, indeed, did give to Senator McMahon in a substantial way the information which Senator Hickenlooper had sought.

When Mr. Browder had been excused and when Chairman Tydings had thanked him for his cooperation, the Chairman said:

> "I would like to ask Senator Hickenlooper if, in that list of names that you read, many of which I have not heard of before, there are any employees who have been in the State Department or are now in the State Department, and if he will not give me those names so that I may see if we can reach an understanding and at the same time try to keep you in the character that you say you want to remain in."

Seemingly in replying to the chairman, Senator Hickenlooper said:

> "But every one of these questions that I have asked this witness has been asked for the purpose that I believe it can lead to information in connection with the State Department activities."

This indicates that Senator Hickenlooper had in mind that the interrogation might possibly lead to information in connection with the State Department activities. In these circumstances the Court thinks that the response of Senator Hickenlooper lends support to the belief of the witness that the Senator was embarking upon a fishing expedition.

At the very end of the examination Senator Tydings in effect relieved the defendant from any obligation to answer the questions which had been propounded to him concerning individuals, except Vincent and Service, and as to them the defendant said:

> [fol. 173] "To the best of my knowledge and belief, they never had any direct or indirect connection with the Communist Party."

The committee owed to the defendant a show of sincerity and frankness which was withheld unless indeed it acquiesced in his claim of privilege. His objections were not acted upon and he had the right to believe that his views and explanations were acceptable to the committee.

Viewing the case in the light of the event, the attending circumstances, the declared yet uncertain purpose of the committee, the make up of the committee, the defendant himself, who he was and had been, his behavior before the committee, and the obvious and obscure mental processes of persons concerned, the Court could not permit a verdict of guilty to stand.

The Court is prepared to grant defendant's motion for a judgment of acquittal. It is so ordered.

[fol. 174] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1752-50

UNITED STATES OF AMERICA,

v.

FRANK HASHMALL, Defendant

OPINION OF THE COURT

The Court (Holtzoff, J.): It seems to the Court it would be helpful to recapitulate some of the basic principles regarding the constitutional privilege against self-incrimination, which is one of the time-honored and basic principles of the Bill of Rights. It was made a part of the Bill of Rights as the result of bitter experience known to the Founding Fathers and to the Members of the First Congress which submitted the Bill of Rights for ratification as part of the Constitution.

I refer to the experience in England during the period when many persons were oppressed in connection with criminal prosecutions and were required to incriminate themselves if the authorities saw fit to take that course.

We cannot minimize this constitutional privilege for the sake of obtaining information in any particular instance, no matter how important it is to obtain that information.

The applicable principles in construing and applying the privilege of self-incrimination is that no one can be required to furnish evidence which would tend to convict him of a crime. That privilege, however, is not limited to the specific question as to whether the witness committed a specific crime. It would not be of very much value if it were so limited. And the courts since the day of the decision by Chief Justice Marshall in the Aaron Burr case have so recognized.

The privilege applies to an endeavor to secure information which would lead to information which would cause a conviction of the witness of some criminal offense. For example, obviously a witness could refuse to answer the question: "Did you commit such and such a murder?" But he could also refuse to answer the question: "Were you at such and such a place at such and such a time?" because that question might place him at the place where the murder was committed, at the moment it was committed, and thereby be a step toward securing his conviction.

[fol. 175] The question as to whether a person is a member of the Communist Party, I think is within the privilege, because it was held in the Communist case in New York that the Communist Party or the active members of the Communist Party are a conspiracy to overthrow the Government by force and violence, and that is a criminal offense. So, to ask a person whether he is a member of the Communist Party might lead to securing evidence which would convict him of a conspiracy with others to overthrow the Government.

Of course, the question on its face must appear to be such as would indicate some basis for the assertion of the privilege. The assertion of the privilege must be within reason. A question which is obviously innocuous must be answered.

For example, to ask a person's name and address would not be within the privilege. But if there is any reasonable possibility that one answer or the other might tend to disclosure of incriminating evidence against the witness, it is the witness' choice whether to answer the question or not. As Chief Justice Marshall indicated, the witness cannot be required to disclose his reasons for asserting the privilege, because in doing so he might have to disclose the very information which he has a right to withhold.

This brings me to the specific counts of this indictment. I will first take up Count V.

The question in Count V is: "Whether the defendant testified as a witness for the defendants in the trial referred to in Counts III and IV as to what the Communist Party in the United States stood for and so testified from defendant's own knowledge because of his membership in the Communist Party."

An answer "Yes" would mean that the defendant testified as to what the Communist Party stood for because of his membership in the Communist Party. It would be an admission that he was a member of the Communist Party. He has a right to refuse to make that admission under the Constitution.

Now I go back to Counts III and IV. Counts III and IV involve questions that on their face are perfectly innocuous, and it would have been perhaps better policy if he had answered them. Each of them asks whether he gave certain testimony in the trial of the eleven Communists in New York.

If they stood alone, I would find the defendant guilty of those counts, because obviously he could not possibly incriminate himself by answering either yes or no. However, it is necessary to read these questions in the context in which they were asked.

[fol. 176] The defendant, before these questions were asked, had refused to answer whether he was at that time a member of the Communist Party. He refused to answer this question on the ground that to answer it might tend to incriminate him. Admittedly he had the right to assert his privilege, and no contempt of Congress is charged as to that question.

Then a series of questions followed to either induce him to answer that basic question, or else to ascertain why he chose to assert the privilege.

Of course an interrogating tribunal, once the privilege has been asserted, does not have a right to interrogate the witness as to why the privilege is being asserted, because, as has already been said, that might require disclosure of the very information which the witness has a right to withhold.

In the course of these supplemental questions apparently propounded for the purpose of inducing the defendant to answer the question, or in the alternative to get more details as to why he chose to assert his privilege, he was asked a number of questions among which were the questions: Well, didn't you testify so and so at the trial of the eleven Communists? And didn't you testify so and so at that trial? That is the substance of Counts III and IV.

I think in the light of the context he had a right to stop. And when he asserted his pvirilege and declined to answer the basic question, he had a right to decline to answer any supplemental questions which were directed at him in an effort to induce him to change his attitude in respect to the privilege, or else to ascertain why it was that he was asserting it, or to demonstrate to him that it was foolish for him to assert the privilege.

The Court finds the defendant not guilty.

[fol. 177] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO, CRIMINAL DIVISION

STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

EXCERPTS FROM DEFENDANT'S REPLY BRIEF—Filed February 15, 1954

* * * * * * *

I. Defendant's Claim of "First Amendment Rights" vs. State's Discussion of "The Inherent Right in Government of Self-Preservation"

Although this is one of the important aspects of the instant case, little remains to be said in this reply in addition to the discussion in defendant's first brief and the ex-
[fol. 178] cellent material in the *Smilack* brief, pages 4-7.

However, the prosecution's blunt statement at page 6 that "Any atack on the foundations of that government either federal or state compels it to take whatever steps are necessary to preserve its ideals and institutions" seems to completely lose sight of the fact that the one of the most basic of those institutions is freedom of speech, freedom of assembly and association, in short, freedom of thought. No mention is made by the prosecution of the sentiments expressed in the Declaration of Independence or the philosophy behind it, that a government is a voluntary compact between people. Thomas Jefferson's admonitions about the importance of freedom of speech for the very people who disagree with the existing order of things; Abraham Lincoln's strong reiteration of the "freedom of compact among people's" idea in his First Inaugural; indeed, the contents of Article I, Section 2, of the Ohio Constitution and the classic "clear and present danger" test of Justice Holmes—all seem to have been completely forgotten by the prosecution.

Perhaps the quickest way to call these historical truths to our attention once again is to quote from the recent opinion of Federal District Judge Youngdahl of the District of Columbia in *U.S. v. Lattimore* (D.C.-D.C.) (112 Fed. Supp. 507, May 2, 1953). The Judge threw out 4 counts in the perjury indictment against Owen Lattimore, (based on his appearance before the Congressional Committee investigating the internal security of the nation and the operation of laws in this field,) and expressed doubt that the remaining 3 counts could ultimately "pass the test of materiality (p. 513). His decision was based on the inexact nature of the charges and on their violation of First Amendment rights (carried into the Ohio Constitution, but referred to here in this shorthand manner.) He summarized the latter point at pp. 518 and 519:

> "Time and time again the Supreme Court has emphasized the freedom of the First Amendment to have opinions and sympathies, unexpressed by overt acts that show a clear and present danger to the Constitutional form of government guaranteed by the Constitution. (*Schenck* v. *U.S.*) Criminal sanctions cannot be imposed where we hold 'beliefs and opinions concerning domestic measures and treaties in national

and world affairs.' (*Taylor* v. *Mississippi*, 319 U.S. 583, citing *W. Va. State Bd. of Education* v. *Barnette*, [fols. 179-181] 319 U.S. 624; *DeJonge* v. *Oregon*, 299 U.S. 353; Justice Douglas concurring in *U.S.* v. *Rumeley*, 345 U.S. at 57, and Justice Jackson dissenting in *A.C.A. v. Douds*, 339 U.S. at 437.) In our present concern for the internal and external threat of Communism and in pursuing our efforts to strike down this threat, we should endeavor to be consistent and not attempt to require a conformity in thought and beliefs that has no relevancy to a present danger to our security."

Indeed, Judge Youngdahl might have cited Justice Frankfurter's majority opinion in the *Rumeley* case indicating that "we would have to be that 'blind' Court . . . not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the congressional power of investigation." (p. 44). While the Court expressed its concern with the First Amendment question in that case, the case was decideable on other grounds. The *Rumeley* decision foreshadows the Court's consideration of the First Amendment question, as such in the *Emspak* case, now pending before it.

Page 2 of defendant's reply brief in the *Smilack* case disposes of the *Josephson* and other cases cited by the prosecution in its reply brief in this case also.

[fol. 182] III. The Commission Was Without Power to Ask the 37 Questions Because the Federal Government Had Superseded State Action in This Field:

Defendant's opening brief argued that the Commission did not have power to ask the 37 questions (now counts in the indictment) because the questions were not in furtherance of a valid legislative purpose (pages 5-6). The prosecution replied by merely stating (at p. 7 of its answering brief) that "The legislature had an undeniable right to investigate and to legislate in this field." The quotation from the *Robinson* case does not touch on the issue presented here, and the *Josephson* case, being a federal case, merely reinforces the defendant's position, as will become clear below. Defendant relies additionally upon the January 25, 1954, decision of the Pennsylvania Supreme Court

in the case of *Commonwealth of Pennsylvania* v. *Steve Nelson*, in which the court held that a state legislature has no authority whatsoever in the field of protection of the state and federal governments from organizations such as those defined in O.G.C. 76-31(1)(a) and (b).

Nelson, an admitted leader of the Communist party, was indicted under the Pennsylvania state sedition statute of 1919 for an attempt to overthrow the governments of the United States and the State of Pennsylvania by force and violence. The evidence consisted largely of proof of defendant Nelson's Communist Party activities, but no evidence was introduced concerning "a seditious act or even utterance directed against the Government of Pennsylvania."

[fol. 183] (See p. 9 of the opinion of the Supreme Court, attached hereto as Appendix B.) Following conviction and affirmance by the Superior Court (172 Pa. 125, 92 A 2d 431), the case was heard by the Pennsylvania Supreme Court. The Court reversed the judgment and quashed the indictment against Nelson on the specific ground that the Pennsylvania sedition act was superseded by the so-called federal Smith Act (54 Stat 670):

> "Under our federal system, as is generally known, there are functions of government which a State may not exercise because such matters have been committed, either expressly or impliedly, by the Constitution of the United States to the care of the Federal Government (p. 4). . . . There are, however, other matters with respect to which both the Federal Government and a State may concurrently legislate. But, even there, if the inference is reasonably deducible that it was the purpose of Congress by its enactment to preempt the particular field, State legislation on the same subject is automatically suspended. This is so regardless of the validity in general of the state statute which is simply superseded and, thus, rendered inefficacious so long as the federal statute endures. "The criteria for determining the congressional purpose in such connection may be evidenced in several ways (p. 5) . . . the congressional purpose to pre-empt a particular field is not made to depend upon a positively expressed legislative intent to that end. Such

purpose can as readily be evidenced objectively by what the circumstances reasonably indicate as being necessary for the complete and unhampered effectuation of the federal aims and objectives. (p. 6.) . . . When, therefore, a State assumes to punish, as does the Pennsylvania statute here involved, sedition against the United States, it is intruding in a matter where the national interest is obviously paramount. It follows necessarily that the Federal Government's control of the field must be exclusive if it is to protect itself effectively and completely. And that means no sharing of the jurisdiction with the States." (p. 8.)

The decision goes further:

". . . it is difficult to conceive of an act of sedition against a State in our federated system that is not at once an act of sedition against the Government of the United States—the Union of the forty-eight component States. Conversely, the duty of suppressing sedition within a State rests directly upon the Federal Government by virtue of Article IV, Section 4, of the Constitution which charges the National Government with the duty of guaranteeing 'to every State in this Union a Republican Form of Government.' This positive constitutional mandate Congress undertook to carry out in the original Smith Act by expressly making it a crime for anyone to advocate, etc. the overthrow or destruction by force or violence of '*any* government in the United States' (Emphasis supplied)." (p. 9.)

The opinion concludes with a restatement of the essential nature of First Amendment rights and the duty of the courts to protect such rights, particularly in times of stress.

This line of argument (and the line of decisions supporting it) applies equally to the parallel situation in the instant case:

[fol. 184] The purpose of the state legislature and all its committees is the preparation, consideration, and passage or rejection of legislative bills. The state legislature can not pass bills dealing with subjects wholly within the jurisdiction of and already acted upon by the federal government. The question of the protection of the state

and federal governments from nationwide seditious organizations or activities is such a subject. The conclusion is inescapable that no committee of the state legislature can investigate this subject for the purpose of preparing legislation. Therefore, any witness who declines, for whatever reason, to answer questions asked of him in connection with such an investigation can not be guilty of contempt for such declination, the entire investigation being void ab initio. As pointed out above (p. 5), the questions asked of this defendant by the Ohio Un-American Activities Commission related to the meetings, activities, and personnel of the Communist Party. It is perfectly clear from the first annual report of the Commission to the legislature (of which this Court is asked to take judicial notice) that the Commission was concerned with the Communist Party of the United States, of which the Ohio Communist Party is a part. No allegation is made that an independent Communist Party operating in Ohio with particular reference to Ohio affairs sought to overthrow the government of the state of Ohio. Count 27 in this indictment indicates the national character of the Communist Party, as do counts 11 and 18, which mention Martin Chancey and Robert Campbell, both under indictment in Cleveland under the federal Smith Act charged with conspiracy to advocate seditious doctrines as to the federal government.

It is particularly significant that the Pennsylvania Supreme Court quashed the indictment against Nelson as to seditious acts against the STATE government on the same theory of supersession by the federal government in this field. (The opinion does not show that he was indicted for seditious attempts as to both state and federal governments, but this is spelled out in the indictment itself, of which defense counsel has a copy in her possession.) So that, even if the Commission claimed that it had limited its investigation to "UnAmerican activities" directed against the government of the state of Ohio, this would not make its actions constitutional.

[fol. 185] (File endorsement omitted)

In the Court of Common Pleas, Franklin County, Ohio

STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

DECISION

Rendered this 3rd day of May, 1954.

GESSAMAN, J.

This case is submitted to the Court upon the evidence and the briefs of counsel, a jury having been waived. The defendant was indicted by a Grand Jury of this county for refusing to testify on April 1, 1952, before a committee of the General Assembly. There are thirty-seven counts in the indictment.

The statute under which the indictment was returned was Section 12845, General Code.

> "Section 12845. Refusing to testify before general assembly or a committee thereof. Whoever, having been subpoenaed or ordered to appear before either branch of the general assembly, or before a standing or select committee of the general assembly, or either branch thereof, fails so to do, or, having appeared, refuses to answer a question pertinent to the matter under inquiry, or to produce, upon reasonable notice, books, papers or documents in his possession or under his control, pertinent thereto, shall be fined not less than one hundred dollars nor more than five thousand dollars."

The record discloses that the defendant did not answer approximately forty-one questions propounded to her by counsel for the committee. She was indicted for an alleged refusal to answer thirty-seven of the questions. The responses which she gave to these questions vary. After stating her name, her response to the next question "Where [fol. 186] do you reside, Mrs. Morgan?" was "I regret that I cannot answer your question under the Fifth Amend-

ment of the Constitution, because to do so would give your Committee an opportunity to incriminate me." (pp. 59-60 of the record.) Examples of other responses are: "I appeal under the Fifth Amendment." (p. 60); "I refuse to answer under the Fifth Amendment" (p. 61); "I refuse and I appeal under the Fifth Amendment." (p. 62). The other responses are of similar import. In practically all of the responses the defendant invoked or attempted to invoke "the Fifth Amendment."

Before considering the questions raised by counsel for defendant, we direct our attention to Counts 2, 29 and 35 of the indictment. The question in Count 2 is:

> "Now, Mrs. Morgan, would you explain to the Commission how revealing your address at which you were served with a subpoena by the Sheriff of Franklin County would tend to incriminate you?"

The question in Count 29 is:

> "Isn't it a fact, Mrs. Morgan, that you were arrested under the name of Catherine O'Rourke for illegal picketing during a strike at the AZO plant?"

And the question in Count 35 is:

> "Are you aware of the fact that the Civil Rights Congress has been cited as both a subversive and Communist organization by the Attorney-General of the United States?"

We are of the opinion that these questions are not "pertinent to the matter under inquiry." Neither her explanation of how revealing her address would incriminate her, nor her answer as to whether or not she had ever been "arrested under the name of Catherine O'Rourke for [fol. 187] illegal picketing," nor her awareness or unawareness that "the Civil Rights Congress has been cited as both a subversive and Communist organization by the Attorney General of the United States" appear to be pertinent to the matter under inquiry. The motion of defendant to dismiss is therefore sustained as to Counts 2, 29 and 35.

I. Counsel for the defendant contends that no evidence was offered by the State by way of proof that the Com-

mittee before which the defendant was called to testify was a "select" committee. (Defendant's opening brief, p. 1.) No evidence was necessary. This was a question of law and Judge Bryant in his decision rendered October 13, 1953, on demurrer to the indictment, held that it was a select committee. (See pp. 21-33 and p. 41 of Judge Bryant's decision.)

II. Counsel for defendant also contends that the State failed to prove that the questions in the indictment were pertinent to matters under inquiry and that the Commission had the power to ask such questions. (Defendant's opening brief, p. 3.) We have already passed upon the questions in Counts 2, 29 and 35. Again this is a question for the Court to determine. As was said in the case of *United States* v. *Emspack*, 95 F. Supp. 1012 at p. 1017:

> "The pertinency of the evidence is not determined by its probative value, and like the question of relevancy in a trial, it is a question of law."

At page 21 of his opinion, Judge Bryant held that "they (the questions) appear to be clearly within the scope of duties assigned to the said Commission." With that conclusion we agree. Sec. 76-31, General Code, provided at the time in question, in part as follows:

[fol. 188] "Powers and duties of commission.

The commission shall have the power and duty

(1) To investigate, study and analyze

(a) all facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(b) all facts concerning persons, groups and organization, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the

state or national government or the industrial potential of this state;

(c) the operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;' * * *"

There can be no doubt but that the remaining questions were pertinent to the matter under inquiry as above defined. It necessarily follows, therefore, that the Commission had the power to ask the questions. It cannot be said that defendant's answers to the questions would have shed no light upon "additional legislation or revision of existing laws." No such broad and final conclusion can be reached when the questions are considered in the light of the powers of the commission. Even though it be conceded that her affirmative answers would not have shed all the light upon the matter under inquiry, it would have shed some light from which the commission could have proceeded. It is obvious, however, that the *questions* were pertinent to the matter under inquiry. We are not called upon to [fol. 189] speculate as to what information defendant's answers might have given to the commission, if she had answered any or all of the questions. It is our opinion that the questions were pertinent to the matter under inquiry and that the commission therefore had the power to ask the questions.

III. Counsel for the defendant also contends that the State did not prove that the defendant did "unlawfully and wilfully refuse to answer" the questions listed in the indictment. (Defendant's opening brief, p. 6.) Five arguments are offered in support of this contention, the first being that defendant in fact answered all questions. How can this be said when to several questions the defendant said "I refuse" or "I refuse to answer" and involved the Fifth Amendment and to other questions merely invoked the amendment? There is absolutely no basis for this argument as the record clearly discloses.

The second argument is that there can be no waiver of the privilege against self-incrimination unless it is abso-

lutely clear that the witness intended to waive the privilege. (Defendant's opening brief, p. 7.) It is admitted that the defendant did not waive any privilege which she thought she had under the Fifth Amendment. She repeatedly referred to the "Fifth Amendment" obviously referring to the Fifth Amendment to the Constitution of the United States. In the case of *Smith* v. *United States*, 337 U.S. 137, the court said at p. 150: "Privilege can be waived • • •". She did not claim any privilege under any other document and, therefore, in view of her express language must be [fol. 190] held to have waived any other privilege that might exist.

The third argument is that there is no waiver of the privilege against self-incrimination merely because the witness fails to use certain words in claiming the privilege. (Defendant's opening brief, p. 7.) We concede that the language which defendant used was sufficient to attempt to invoke the protection of the "Fifth Amendment." However, Judge Bryant has held that the protection of the Fifth Amendment is "not available to the defendants in these cases." (Judge Bryant's opinion, page 42.) The words used by defendant were sufficient to invoke the protection of the Fifth Amendment, if that were applicable, but at no time did the defendant invoke any other privilege.

It is argued that "the chairman of the Commission explicitly stated that he heard and understood and *accepted* the witness' claim of the privilege against self-incrimination." (Defendant's opening brief, p. 11.) Whether the chairman "accepted" the defendant's claim of privilege is immaterial. The chairman could not "accept" that which the defendant had no right to claim. Furthermore, we feel that an examination of the entire record does not disclose any so-called "acceptance" by the chairman.

Counsel for the defendant also argues that there can be no finding of guilt "when there was no direction to answer by the chairman of the Commission and no notice given the witness that her claim of the privilege had been rejected." (Defendant's opening brief, p. 12.) At page 35 of his opinion, Judge Bryant, in passing upon the demurrer to the indictment held that "The doing or failing to do the act is punishable if proven in a proper case. There is no requirement under the provisions of the statute

[fol. 191] in this case * * * that a direction to answer be given.". In this we concur. Likewise, it was unnecessary for the chairman to advise the defendant that her claim of privilege was rejected.

IV. It is contended that "a guilty verdict would violate the privilege against self-incrimination and due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and Article one, Section 10 and 16 of the Ohio State Constitution." (Defendant's opening brief, p. 14.) We have already discussed the claim under the Fifth Amendment. We find nothing in the record which even tends to violate the guarantee of due process of the Fourteenth Amendment. The defendant did not attempt to invoke any protection which she might have had or which she thought she had under the Constitution of Ohio.

V. Finally it is contended that "the 37 counts in the indictment do not set forth 37 separate offenses but only repeat three questions which the defendant was privileged to refuse to answer." (Defendant's opening brief, p. 18.) Counsel urge that the questions in Counts 1 to 5 inclusive are purely preliminary and therefore not pertinent to the matter under inquiry. The Court has previously disposed of Count Two. The fact that a question is purely preliminary does not make it irrelevant. It may not go directly to the heart of the matter but it is still pertinent.

It is also urged that many of the questions were merely restatements of a previous question. The test by which a Court determines whether the offenses charged in two or more counts of an indictment are identical or separate is well stated in *United States* v. *Emspak, supra,* at p. 1014 [fol. 192] of the opinion as follows:

> "(1) In Upshaw v. United States, 10 Cir., 1946, 157 F. 2d 716, the Court set out the test for determining the identity of offenses as follows: 'And the generally recognized test for determining whether the offenses charged in two or more indictments or in different counts of the same indictment are identical or separate is whether the same proof would sustain a conviction under both or whether each requires proof of one or more facts which is not required of the others. Blockburger v. United States, 284 U.S. 299,

52 S.Ct. 180, 76 L.Ed. 306; Gilmore v. United States, (10 Cir., 124 F.2d 537).' Id., 157 F. 2d at page 717.

(2) As contended by the United States in this proceeding if a witness refuses to answer any question he has violated the statute. Clearly it is necessary to prove a different fact to sustain the charge for each different question: Applying the above test to the indictments in these cases, the refusal to answer each question must be charged in a separate count since the same proof would not sustain a conviction under each count, and an indictment charging more than one offense in any one count is as defective as an indictment charging a single offense in multiple counts.''

The Federal statute considered in that case was quite similar to Sec. 12845 G.C.

Following the test above set forth, we are of the opinion that the offenses charged in Counts 6, 7 and 36 are identical. All are directed to the question as to whether the defendant was then or ever had been a member of the Communist Party. The motion of defendant to dismiss, therefore, is sustained as to Counts 7 and 36. As to all other counts, not herein dismissed, we are of the opinion that the same proof would not sustain a conviction under each count and that, therefore, none of the questions are restatements of other questions.

In view of the conclusions herein expressed, the motion of counsel for defendant ''for a directed verdict of ac-[fol. 193] quittal and discharge of this defendant'' is sustained as to Counts 2, 7, 29, 35 and 36 of the indictment and is overruled as to all other counts. The Court finds the defendant guilty as charged in Counts 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 37.

Myron B. Gessaman, Judge.

APPEARANCES:

Hon. Frank H. Kearns, Prosecuting Attorney; Hon. Lawrence A. Ramey, Asst. Prosecuting Attorney; Hon. Earl W. Allison, Asst. Prosecuting Attorney, Attorneys for the State.

Mrs. Ann Fagan Ginger, 4 Fayston St., Boston 21, Mass., Attorney for Defendant.

[fol. 194] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Case No. 32,836

STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

MOTION FOR NEW TRIAL—Filed May 3, 1954

Now comes the Defendant, Anna H. Morgan by her attorney Ann Fagan Ginger and respectfully move the Court for a new trial in the above entitled matter for the following reasons towit:

1. That the verdict of the Court rendered on the 3rd day of May, 1954, is not sustained by sufficient evidence.
2. That the verdict of the Court is contrary to law.
3. Error of law occurring at the trial duly excepted to by counsel for the Defendant.

Ann Fagan Ginger, Attorney for Defendant, Anna H. Morgan.

Received copy of above 5/3/54. L. A. Ramey, Asst. Pros. Atty.

[fol. 195] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO, CRIMINAL DIVISION

No. 32836

STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

ENTRY OF ORDER DENYING MOTION FOR NEW TRIAL—May 15, 1954

This matter coming on to be heard upon the motion for a new trial, the court being fully advised in the premises, finds said motion not well taken.

Wherefore, it is the order of the court that said motion be and the same hereby is overruled. To all of which defendant excepts.

Gessaman, Judge.

Approved: Frank H. Kearns, Prosecuting Attorney.

[fol. 196] IN THE COURT OF COMMON PLEAS

EXCERPTS FROM TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES —TO COURT OF APPEALS

Criminal Case C. of A. 5119

Court of Common Pleas, Franklin County, Ohio

No. 32836

THE STATE OF OHIO, Plaintiff,

vs.

ANNA H. MORGAN, Defendant

Contempt General Assembly of Ohio Sec. 12845 (37 counts)

May 21, 1952—Indictment Filed.
May 23, 1952—Order and Copy of Indictment Issued to Sheriff.
May 24, 1952—Defendant Recognized.
May 29, 1952—Arraigned, Reading Waived, Plea Not Guilty.
June 3—Proceedings on arraignment filed.
Oct. 25, 1952—Demurrer to Indictment filed.
Oct. 25, 1952—Brief in support of Demurrer filed.
Dec. 11, 1952—Memo opposed to Demurrer filed.
Dec. 12, 1952—Defendant's motion overruled as per entry.
Oct. 15, 1953—Demurrer of Defendant overruled as per entry filed.
[fol. 197] Nov. 30, 1953—Memorandum in support of motion for directed verdict of acquittal and final arguments for acquittal filed.

Dec. 30, 1953—Memo, brief on behalf of State of Ohio filed.

Feb. 15, 1954—Defendant's reply brief filed.

April 13, 1954—Letter of Counsel for Defendant to Judge Myron B. Gessaman filed.

May 3, 1954—Trial by Court, Defendant guilty on Counts Nos. 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 37. And Not Guilty on Counts 2, 7, 29, 35 and 36. Defendant fined $100.00 and Costs on each Count, fine suspended on counts 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 37.

May 3, 1954—Decision filed.

May 3, 1954—Defendant's motion for new trial filed.

May 3, 1954—Defendant recognized.

May 15, 1954—Entry overruling motion filed.

May 15, 1954—Notice of appeal filed.

May 15, 1954—Precipe for Journal entries and all original papers filed.

May 20, 1954—Bill of Exceptions filed.

May 21, 1954—I served the within notice on the said Prosecuting Attorney of Franklin County, Frank H. Kearns by handing to him personally a true copy thereof this 21st day May 1954, Roy King, Clerk, by W. O. Wardlow, Deputy Clerk.

[fol. 198] [File endorsement omitted]

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

No. 5119

THE STATE OF OHIO, Plaintiff-Appellee,

vs.

ANNA H. MORGAN, Defendant-Appellant

OPINION

Rendered on the 1st day of November, 1954

Mr. Frank H. Kearns, Prosecuting Attorney, Mr. Lawrence A. Ramey and Mr. Earl W. Allison, Assistant Prosecuting Attorneys, Courthouse, Columbus 15, Ohio, for Plaintiff-Appellee.

Mrs. Ann Fagan Ginger, 4 Fayston Street, Boston 21, Mass., for Defendant-Appellant.

By the Court.

Judgment affirmed for the reasons stated by the trial court in its opinion.

Montgomery, P. J., of the Fifth District, and Nichols, J., and Griffith, J., of the Seventh District, sitting by designation, Concur.

[fol. 199] IN THE SUPREME COURT OF OHIO. JANUARY TERM, 1955

Case No. 34311

Attorneys

Frank H. Kearns, Prosecuting Attorney, Lawrence A. Ramey, Earl W. Allison, Assistant Prosecuting Attorney, Columbus, Ohio. Ann Fagan Ginger, 170 New York Avenue, Brooklyn 26, New York, Thelma C. Furry, 815 Second National Building, Akron 2, Ohio.

Title of Case

THE STATE OF OHIO, Plaintiff-Appellee,

vs.

ANNA H. MORGAN, Defendant-Appellant

Action

Appeal from the Court of Appeals of Franklin County

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS OF FRANKLIN COUNTY TO CERTIFY ITS RECORD

MEMORANDA OF PLEADINGS &C., FILED, WRITS ISSUED, &C., JUDGMENTS, ORDERS AND DECREES

DOCKET ENTRIES

Date

December 1, 1954—Notice of Appeal and proof of service filed.

December 1, 1954—Entry extending time for filing appellant's brief to January 15, 1955. Carl V. Weygandt, Chief Justice. J. 41, p. 340.

December 6, 1954—Court of Appeals Transcript, original papers & bill of exceptions filed.

December 7, 1954—Motion for an order to Certify Record and proof of service filed.

January 12, 1955—Assignments of Error and appellant's non-printed brief filed.

January 12, 1955—Cause docketed on appeal as of right.

January 19, 1955—Leave to file Appellee's brief on or before February 11, 1955, filed.

DOCKET ENTRIES

Date

February 9, 1955—Motion by Appellee to Dismiss Appeal as of Right filed. 2/25/55 proof of service filed.

February 11, 1955—Brief of Appellee (12) filed. 2/25/55 proof of service filed.

[fol. 200] February 23, 1955—Motion by Appellee to Dismiss appeal as of Right, overruled. J. 41, p. 431.

February 23, 1955—Motion for an order directing the Court of Appeals of Franklin County to certify its record, allowed. J. 41, p. 431.

February 23, 1955—Order #3005 issued to Clerk of Courts to Certify Record.

March 4, 1955—Assignments of Error and proof of service filed.

March 4, 1955—Cause docketed on its merits.

March 4, 1955—Certificate from Court of Appeals filed.

March 25, 1955—Appellant's non-printed brief refiled and notice of refiling filed.

March 25, 1955—Appellant's non-printed supplemental brief filed.

April 29, 1955—Entry extending time for filing appellee's supplemental brief to May 6, 1955. Carl V. Weygandt, Chief Justice. J. 41, p. 490.

April 29, 1955—Appellee's non-printed brief and proof of service filed.

May 6, 1955—Appellee's supplemental brief filed.

July 20, 1955—Bill of Exceptions sent to Thelma C. Furry, 9/13/55 returned.

September 6, 1955—Supplemental Memorandum of Appellant filed.

September 30, 1955—Second Supplemental brief of Appellee filed.

February 23, 1956—Judgment Affirmed. J. 41, p. 697.

February 29, 1956—Notified Application for Rehearing to be filed.

March 7, 1956—Application for rehearing filed.

March 6, 1956—Original Papers, Bill of Exceptions sent to Clerk. 3/29/56 Returned.

March 14, 1956—Rehearing Denied. J. 42, p. 14.

April 26, 1956—All Court of Common Pleas and Court of Appeals Files sent to Thelma Furry via Express.

DOCKET ENTRIES

Date

June 11, 1956—Notice of Appeal to United States Supreme Court Filed.

[fol. 201] JOURNAL ENTRIES

Journal No. 41, p. 340

Wednesday, December 1, 1954.

Entry: Upon application of appellant, and for good cause shown, it is ordered that the time for filing appellant's brief on motion herein be, and the same hereby is extended to January 15, 1955. Carl V. Weygandt, Chief Justice.

Journal No. 41, p. 431

Wednesday, February 23, 1955.

MOTION BY APPELLEE TO DISMISS APPEAL AS OF RIGHT. FRANKLIN COUNTY

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal No. 41, p. 431

Wednesday, February 23, 1955.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS OF FRANKLIN COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion be, and the same hereby is, allowed.

Journal No. 41, p. 490

Friday, April 29, 1955.

Entry: Upon application of appellee, and for good cause shown, it is ordered that the time for filing appellee's supplemental brief herein be, and the same hereby is extended to May 6, 1955. Carl V. Weygandt, Chief Justice.

Journal No. 41, p. 697

February 23, 1956.

APPEAL FROM THE COURT OF APPEALS OF FRANKLIN COUNTY: JUDGMENT—

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Franklin County,

and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its cost herein expended taxed at $——

Ordered, That a special mandate be sent to the Court of Common Pleas of Franklin County, to carry this Judgment into Execution.

[fol. 202] Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Franklin County, "for entry".

Journal No. 42, p. 14

Wednesday, March 14, 1956.

REHEARING DOCKET

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

[fol. 203] IN THE COURT OF APPEALS FOR THE SECOND JUDICIAL DISTRICT OF OHIO, FRANKLIN COUNTY

NOTICE OF APPEAL ON QUESTIONS OF LAW TO THE SUPREME COURT OF OHIO—Filed December 1, 1954

Defendant-appellant hereby gives notice of her appeal to the Supreme Court of Ohio, on questions of law, from the judgment and final order of this court made and entered on the 12th day of November, 1954, affirming a judgment of the Court of Common Pleas of Franklin County, Ohio, convicting this appellant of a misdemeanor, to wit: contempt of a state legislative committee.

This appeal is taken

(a) in a case involving constitutional questions;

(b) in a misdemeanor case on condition that a motion to certify be allowed by the Supreme Court.

(S.) Ann Fagan Ginger, Thelma C. Furry, Attorneys for Defendant-Appellant.

[fol. 204-207] IN THE SUPREME COURT OF OHIO

Case No. 34311

MOTION FOR AN ORDER TO CERTIFY RECORD—Filed December 7, 1954

(Omitted in printing)

[fol. 208] IN THE SUPREME COURT OF OHIO

Case No. 34311

ASSIGNMENT OF ERRORS—Filed March 4, 1955

First Assignment of Error. The verdicts of the trial and appellate courts are not sustained by sufficient evidence and are based on improper conclusions of law:

A. No evidence was presented by the State of Ohio from which the court could conclude that the Un-American Activities Commission was a select committee of the Ohio General Assembly with authority to question witnesses on April 1, 1952.

B. No evidence was presented by the State of Ohio to prove the pertinency of the questions asked to the matter under inquiry, and the questions were not pertinent on their face.

Second Assignment of Error. The verdicts of the trial and appellate courts deprive defendant-appellant of her privilege against self-incrimination, her right to freedom of speech, assembly and petition, and her right to due process of law, all contrary to the State and National Constitutions:

A. The proceedings were not brought under the applicable section of the Ohio General Code.

B. The evidence shows that the defendant-appellant did not unlawfully and wilfully refuse to answer the 32 counts, [fol. 209] as charged in the indictment, but rather shows:

(a) That she claimed her privilege against self-incrimination;

(b) That she had a right to claim the privilege as to these counts;

(c) That she was not charged with refusal to answer any questions asked by members of the Commission and that she was not notified that her claim of the privilege was rejected by the Commission;

(d) That she was not offered such immunity from prosecution as to compel her to answer.

C. The Commission asked questions exceeding its powers of investigation:

(a) By asking questions in a field in which federal legislation has superseded state action and in which the Commission therefore could not propose legislation;

(b) By asking questions with no legislative purpose but solely with an accusatorial purpose, in violation of the separation of powers within the state government;

(c) By asking questions invading the defendant-appellant's constitutionally-protected rights to freedom of speech, press, assembly, thought, belief and petition.

[fol. 210] Third Assignment of Error. The trial court committed error of law at the trial in ruling that each count of the indictment (except 7 and 36) stated a separate crime and in finding defendant-appellant guilty and sentencing her on 32 counts.

(S.) Ann Fagan Ginger, Thelma C. Furry, attorneys for Defendant-Appellant.

[fol. 211] IN THE SUPREME COURT OF OHIO

Case No. 34311

MOTION TO DISMISS—Filed February 9, 1955

Now comes the plaintiff-appellee herein, the State of Ohio, and respectfully moves this Honorable Court that the appeal as of right filed by the defendant-appellant herein should be dismissed for the reason and upon the ground that no debatable question arising under the Constitution of the United States or the Constitution of the State of Ohio has been presented, inasmuch as that provision of the United States Constitution invoked has been consistently held by this Court and the Supreme Court of the

United States to be inapplicable and no provision of the Constitution of the State of Ohio has been invoked.

(S.) Frank H. Kearns, Prosecuting Attorney. Earl W. Allison, Ass't Prosecuting Attorney, Attorneys for Plaintiff-Appellee.

[fol. 212] **In the Supreme Court of Ohio**

Case No. 34311

Opinion—February 23, 1956

1. A commission created by statute, which is authorized to function after sine die adjournament of the General Assembly and which is composed solely of members of the General Assembly, impersonally described, and whose designated function is to investigate subversive activities and "to recommend such additional legislation or revision of existing laws as may seem advisable and necessary" to the next General Assembly, is within the creating powers of the General Assembly under Section 8, Article II of the Constitution of Ohio, authorizing that body to obtain through committees or otherwise information affecting prospective legislation, is within the term, "committee," as used in that article, possesses all the attributes of a "select committee" of the General Assembly, and is, in fact, a "select committee" thereof within the purview of Section 12845, General Code (Section 2917.42, Revised Code).

2. The General Assembly and its committees have a right to the testimony, pertinent to the matter under inquiry, of each and every citizen of this state in order to obtain information affecting legislative action under consideration or in contemplation, and each citizen has a corresponding duty to give such testimony, subject only to the protection afforded him by the Constitution and by statute.

3. A witness appearing before a committee of the General Assembly, who objects to a propounded question, the objection being in language which the committee might [fol. 213] **reasonably be expected to understand as an attempt to invoke the rule of privilege against self-incrimi-**

nation, thereby invokes any protection against self-incrimination to which he may be entitled under the Constitution of Ohio, regardless of whether the witness' reference is to it or to the Constitution of the United States.

4. Immunity from prosecution pertains solely to a prosecution in the same jurisdiction, and where the immunity is full and sufficient within the state it affords the protection against compulsory self-incrimination guaranteed by the state Constitution and supplants the rule of privilege based thereon.

5. Where there is statutory immunity granted the witness, which affords him as much protection against self-incrimination as that to which he is entitled by the constitutional provision against self-incrimination, there devolves upon the witness a clear duty to give his testimony free of a refusal to answer based upon the rule of privilege arising from the constitutional provision; and the protection against self-incrimination afforded by the Constitution is not abrogated in any manner by a statute setting out a penalty for a breach of this duty.

6. Where a witness has a duty to give testimony free of a refusal to answer on the ground of self-incrimination by a statutory grant of full and sufficient immunity from prosecution, and where it is made a crime to refuse to answer questions pertinent to the matter under inquiry, and where the witness refuses to answer on that ground, [fol. 214] he is guilty of a violation of the criminal statute regardless of whether he is subsequently directed to answer.

Decided February 23, 1956

Appeal from the Court of Appeals for Franklin County.

Appeal from the Court of Appeals for Hamilton County.

In cause No. 34311, appellant Anna H. Morgan, herein, after called appellant, pursuant to subpoena, appeared before the Ohio Un-American Activities Commission at a hearing held by it in Columbus, Ohio, on April 1, 1952.

After being sworn, appellant refused to answer substantially each and every question propounded to her, "under the Fifth Amendment of the Constitution, because to do so would give your committee an opportunity to incriminate me."

Subsequently, on May 21, 1952, appellant was indicted under Section 12845, General Code (Section 2917.42, Revised Code), for her refusal to answer 37 of the questions so propounded.

Her demurrer to the indictment, filed October 25, 1952, having been overruled, appellant, in writing, waived her right to trial by jury, and the cause was tried before a judge of the Common Pleas Court of Franklin County on November 16, 1953.

At the trial the state called as witnesses Gordon Renner, Samuel L. Devine and Edwin H. Hammock.

The first two witnesses are attorneys at law who were members of the 99th General Assembly and the Ohio Un-American Activities Commission, Renner being the elected chairman and Devine the elected secretary thereof, and [fol. 215] both were present at the hearing at which appellant appeared.

Hammock is a court stenographer who was employed by the commission and who recorded the hearing out of which the indictment and trial here under consideration arose.

These witnesses were, of course, subjected to cross-examination. Other than this, however, there was neither testimony nor evidence offered by appellant, she apparently being content to rely upon the validity of either her earlier attack upon jurisdiction by demurrer or her motion for a directed verdict of acquittal duly made at the close of the trial.

The only item of physical evidence in the record is a copy of a subpoena which purports to be a copy of the subpoena duly served upon appellant and by virtue of which she appeared before the commission. It was introduced by the state and its validity is not questioned.

The trial court sustained appellant's motion for a directed verdict of acquittal upon five counts of the indictment, finding that the questions therein included were either not pertinent to the matter under inquiry by the commission or were repetitious of other questions as to the indictment, overruled said motion with respect to the remaining counts, found appellant guilty thereon and imposed sentence.

The Court of Appeals for Franklin County affirmed the judgment of the trial court, and the cause is before this

court both as an appeal of right and by the allowance of appellant's motion to certify the record.

In cause No. 34361, appellants Raley, Stern and Brown, hereinafter called defendants, pursuant to subpoena, ap-
[fol. 216] peared before the Ohio Un-American Activities Commission at a hearing held by it in Cincinnati, Ohio, on October 20, 1952.

Upon the refusal of each to answer certain questions propounded to him, on the ground that to do so might tend to incriminate him, the commission, in compliance with the provisions of Section 76-32, General Code (Section 103.35, Revised Code), caused proceedings in contempt to be prosecuted in the Common Pleas Court of Hamilton County.

Separate indictments were returned by the Grand Jury of Hamilton County, charging defendants with specified violations of Section 12137, General Code (Section 2705.02, Revised Code).

By agreement defendants were tried together before a judge of the Court of Common Pleas, after having individually waived in writing the right to trial by jury.

The trial court found each defendant guilty of contempt as charged in all counts of each indictment, and proceeded to impose sentence.

On appeal to the Court of Appeals for Hamilton County, the causes were consolidated, and that court affirmed in part and reversed in part the judgments of the trial court; and the cause is before this court both as an appeal of right and by the allowance of a motion to certify the record.

OPINION: MATTHIAS, Judge.

These cases involve not only the appeal of Anna H. Morgan (cause No. 34311), but also the appeal of Talmadge Raley, Joseph Stern and Emmet Calvin Brown (cause No. 34361).

[fol. 217] Since the questions raised in each are similar except in one significant respect, the following reasoning and conclusions, written with specific reference to and upon the facts of the Morgan appeal, apply with equal force to the appeal of Raley, Stern and Brown.

From the numerous errors assigned by appellant, the issues raised which are determinative of the case concern:

I. The jurisdiction of the trial court to hear the cause and impose sentence, dependent upon whether appellant appeared before a body which was legally constituted and of which she could be held in contempt and whether such body brought the action in an appropriate manner.

II. Whether appellant by refusing "under the Fifth Amendment" to answer questions sufficiently indicated her intention to invoke whatever rule of privilege regarding self-incrimination to which she was entitled under the Constitution of Ohio.

III. Whether such rule of privilege, if sufficiently invoked, was in fact available to her in view of the Ohio immunity statute.

IV. The necessity of a direction to answer, after each refusal on the ground of self-incrimination, to sustain a finding of contempt.

These matters will be considered in the above order.

I

Appellant attacked the jurisdiction of the trial court to hear this cause and impose sentence, by attacking the indictment upon demurrer. The jurisdictional questions raised by the demurrer and saved by appellant's assign- [fol. 218] ment of errors to this court are essentially two-fold:

A. Was the Ohio Un-American Activities Commission a legally constituted body having the power to compel the attendance and testimony of witnesses on April 1, 1952, which was after sine die adjournment of the General Assembly which created it?

B. If the commission was a legally constituted body, was it a select committee of the General Assembly authorized to prefer charges of contempt under Section 12845, General Code (Section 2917.42, Revised Code), and if so was it precluded from using this remedy by the provisions of Section 76-32, General Code (Section 103.25, Revised Code)?

A

The power of the General Assembly to create investigative bodies is a necessary incident to its power to legislate and to the correlative power to secure sufficient information to enable it to legislate intelligently and independently.

This power is granted, as follows, to the General Assembly by Section 8, Article II of the Constitution of Ohio:

"Each house * * * shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, * * * and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers."

It is seen that the General Asembly is granted by the people of Ohio the power to obtain information affecting [fol. 219] legislation under consideration or in contemplation by the use of *committees or otherwise*.

This court considered an example of a method "otherwise" than "through committees" of obtaining information for legislative purposes in the case of *State, ex rel., Herbert*, v. *Ferguson, Aud.*, 142 Ohio St., 496, 52 N. E. (2d), 980.

That case concerned the constitutionality of the Post-war Program Commission which was established by a special act of the 95th General Assembly. It was composed of a specified number of members of the General Assembly, impersonally described, and certain others who were not members of the General Assembly, and its purpose was essentially to make investigations and to report its recommendations based thereon to the Governor and the General Assembly on or before January 15, 1945, *which was after the next General Assembly*, the 96th, *convened*.

The court, in the fifth paragraph of the syllabus, found:

"A commission composed of members of the General Assembly and others to make investigation of and recommendations on important matters of legislative concern, is within the creative powers of the General Assembly under Section 8, Article II of the Constitution, authorizing that body to obtain through committees or otherwise information affecting prospective legislation."

Thus, this court has recognized that Section 8, Article II, empowers the General Assembly to create a commission for investigative purposes which shall function after sine [fol. 220] die adjournment and make recommendations to the next General Assembly.

We hereby approve that finding. See, also, 49 American Jurisprudence, 258, States, Territories, and Dependencies, Section 41, and cases cited.

It is important to note here that such a commission, when recognized as authorized by Section 8, Article II, may be given the means of exercising the correlative power, expressly granted in this section of the Constitution, to "enforce the attendance and testimony of witnesses, and the production of books and papers."

It is clear, then, that the General Assembly has the power to create an investigative body which is authorized to function after sine die adjournment, and that it validly exercised this power in creating the Ohio Un-American Activities Commission by statute.

B

Appellant was indicted, tried and convicted for violating the provisions of Section 12845, General Code (Section 2917.42, Revised Code), which is as follows:

"Whoever, having been subpoenaed or ordered to appear before either branch of the General Asembly, or before a standing or select committee of the General Assembly, or either branch thereof, fails so to do, or, having appeared, refuses to answer a question pertinent to the matter under inquiry, or to produce, upon reasonable notice, books, papers or documents in his possession or under his control, [fol. 221] pertinent thereto, shall be fined not less than one hundred dollars nor more than five thousand dollars."

Whether a body created by the General Assembly is a select committee within the meaning of this section is determined by the purpose and functions for which such body was created as indicated in the resolution or act of the General Assembly establishing it. The name of such body is not controlling in the absence of a specific definition thereof in the creating statute or resolution.

In considering the constitutionality of the act creating the Post-war Program Commission in the *Ferguson case, supra,* this court discussed the *function* of the body created by the General Assembly.

Determining that the General Assembly had not, by delegating sovereign powers to the program commission,

created civil offices which members of that Legislature would be forbiddedn to hold by virtue of Section 19, Article II of the Constitution, which prohibits the appointment of members of the General Asembly to any civil office created during their terms of office, the court said:

"The act involved establishes a commission, the described functions of which, for the most part, consist of finding facts, assisting in the formulation of plans and the making of recommendations. Surely, this cannot be said to constitute the exercise of sovereign powers."

Similarly, the act with which we are concerned established a commission, the described functions of which con-
[fol. 222] sist of finding facts and making recommendations.

We have described the Post-war Program Commission as an example of the use of the legislative investigative powers conferred by Section 8, Article II, which method is "otherwise" than "through committees."

Since the body created by the act establishing the Post-war Program Commission included members other than legislators, it could not definitinely be called a "committee" within the purview of the use of that word in Section 8, Article II, which must be held to refer only to committees composed solely of members of the General Assembly.

Where, however, a body is created by the General Assembly, by statute, which is composed solely of members of the General Assembly, impersonally described, and whose duties are to investigate subversive activities and "to recommend such additional legislation or revision of existing laws as may seem advisable and necessary," it is a "committee" of the General Assembly under Section 8, Article II of the Constitution, and is a select committee thereof within the purview of Section 12845, General Code (Section 2917.42, Revised Code), having the power to cause the prosecution of a witness for contempt under that section.

Appellant contends that, even though this be so, Section 76-32, General Code (Section 103.35, Revised Code), provides an exclusive remedy to be used by this particular body, thus precluding the application of Section 12845, *supra*.

[fol 223] Section. 76-32, General Code (Section 103.35, Revised Code), provides, in part:

"* * * on the refusal of any person or officer to testify to any matters regarding which he may be lawfully interrogated * * * the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for contempt to be filed and prosecuted in the Common Pleas Court of any county under the provisions of Sections 12138 to 12146, inclusive, of the General Code."

The General Assembly chose the phrase, "may be authorized," rather than the phrase, "shall be authorized" or "must be authorized," in authorizing proceedings under Sections 12138 to 12146, General Code. It is presumed it had a reason for so choosing.

"The intention of the Legislature as to the mandatory or directory nature of a particular statutory provision is determined primarily from the language thereof. * * * a provision couched in permissive terms is generally regarded as directory or discretionary. This is true of the word, 'may' * * *." 50 American Jurisprudence, 49, Statutes, Section 28, and cases cited.

It is seen that this statute by its own terms simply gives the commission a procedure for instituting a contempt proceeding under Section 12137 to 12146, General Code, which it may use at its discretion.

[fol. 224] The fact that the Legislature has endowed a particular committee *which* a *permissive* procedure for punishing witnesses for contempt, which is other than the procedure it has given all like bodies, neither excludes the operation of such usual procedure not precludes its use by any standing or select committee.

However different it might be if the permissive statute were mandatory, the fact remains, from what has been said, that the Ohio Un-American Activities Commission had the power to cause appellant to be indicted and prosecuted under the provisions of Section 12845, General Code (Section 2917.42, Revised Code).

Since the commission, in this case, chose to institute proceedings under a statute providing other than the permissive procedure given it, the validity of such permissive

procedure is not here before the court. The procedure chosen is unassailable.

II

We must consider next whether the language used by appellant in giving her reason for refusing to answer was sufficient to invoke any rule of privilege arising from the provisions guaranteeing protection from compulsory self-incrimination embodied in the Constitution of Ohio.

The record discloses that at the time of the hearing appellant, after having been interrogated and having stated her name, refused to answer, in the following words, the question, "Where do you reside, Mrs. Morgan?":

[fol. 225] "I regret that I cannot answer your question under the Fifth Amendment of the Constitution, because to do so would give your committee an opportunity to incriminate me."

After this she continued to refuse, "under the Fifth Amendment," to answer questions.

The state argues that by the use of this terminology the witness failed to invoke the only constitutional protection pertaining to self-incrimination available to her while appearing before a committee of the General Assembly, to wit, that provided by Section 10, Article I of the Constitution of Ohio.

This argument is based upon the well known doctrine which this court restated in the case of *State* v. *Lindway*, 131 Ohio St., 166, 2 N. E. (2d), 490, as follows:

"The * * * Fifth * * * (Amendment) to the Constitution of the United States, prohibiting * * * compulsory self-incrimination * * * (is) directed exclusively against the activities of the federal government and * * * (has) no application to the states and their agencies." See, also, *Feldman*, v. *United States*, 322 U. S., 487, 490, 88 L. Ed., 1408, 64 S. Ct., 1082, 154 A. L. R., 982, and cases therein cited.

However, in the case of *Quinn* v. *United States*, 349 U. S., 155, 99 L. Ed., 964, 74 S. Ct., 668, the Supreme Court of the United States, considering whether a witness called before a subcommittee of the Committee on Un-American Activities

of the House of Representatives, who refused to answer, basing his refusal upon the refusal by a former witness to [fol. 226] the effect of a declination to answer under the "First and Fifth Amendments" and the "First Amendment to the Constitution, supplemented by the Fifth Amendment," had sufficiently claimed the privilege, said:

"It is agreed by all that a claim of the privilege does not require any special combination of words. * * * If an objection to a question is made in any language that a committee may reasonably be expected to understand as an attempt to invoke the privilege, it must be respected both by the committee and by a court * * *."

We are in complete accord with that conclusion and with the reasoning which supports it and conclude that a witness appearing before an investigating committee of a state Legislature, who objects to a question, the objection being in language which the committee may be reasonably expected to understand as an attempt to invoke the rule of privilege against self-incrimination, whether it be an appeal to the federal Constitution or to a state Constitution, has thereby invoked any protection against self-incrimination to which he may be entitled under either instrument.

It follows that appellant sufficiently indicated her invocation of any rule of privilege to which she was entitled under the protection against self-incrimination afforded her by Section 10, Article I of the Constitution of Ohio.

III

The above finding leads us to the next question raised by this appeal. We must decide whether the immunity granted a witness appearing before a select committee of [fol. 227] the General Assembly by Section 60, General Code (Section 101.44, Revised Code), is so full and sufficient as to supplant the protection provided by the rule that testimony is legally privileged where it might subsequently be used against the witness in a criminal prosecution, which rule is based on the provision of Section 10, Article I of the Constitution of Ohio, providing that "no person shall be compelled, in any criminal case, to be a witness against himself."

Section 60, General Code (Section 101.44, Revised Code), provides, in part:

"* * * the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against him, *nor shall a person be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he so testifies* * * *." (Emphasis ours.)

Although the provisions of this section of the Code have never been construed by this court, the case of *Mouser* v. *Public Utilities Commission*, 124 Ohio St., 425, 179 N. E., 133, considered the provision of Section 553, General Code, which are similar in wording and intent. The hearings in the *Mouser case* were held by the Public Utilities Commission of Ohio.

Section 553 provided, in part:

"A person shall not be excused from testifying * * * in a proceeding based upon or growing out of violation of the provisions of this chapter, on the ground that the testi- [fol. 228] mony * * * may tend to incriminate him * * * *but no person having so testified shall be prosecuted or subjected to a penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified* * * *." (Emphasis ours.)

The similarity of the italicized portions of these two statutes is obvious.

In the *Mouser case*, this court, in construing the immunity provision of the Public Utilities Act, said:

"Section 553, General Code, confers upon such witnesses full and complete immunity by preventing prosecution or subjection to penalties against him 'on account of any transaction, matter or thing concerning which he may have testified.' Since that section affords the witness such absolute immunity, it deprives him of his constitutional right to refuse to answer; and for so refusing he may be punished for contempt."

We find this construction to apply in like manner to the immunity statute here under consideration.

Appellant argues that she is afraid of *federal* prosecution, and that, since the state cannot provide immunity from such prosecution, the state immunity afforded her does not give sufficiently comprehensive protection to deprive here of her constitutional right to refuse to answer.

The question is thus refined to whether a state immunity statute, which is admittedly sufficient to preclude prosecution under the laws of the state but which does not afford immunity from federal prosecution, supplants the right [fol. 229] of a witness, based upon the protection guaranteed by the *state* Constitution, to refuse to answer on the ground of self-incrimination.

In the case of *United States* v. *Murdock*, 284 U. S., 141, 76 L. Ed., 210, 52 S. Ct., 63, 82 A. L. R., 1376, the Supreme Court of the United States said.

"This court has held that immunity against state prosecution is not essential to the validity of the federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, *and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute.* The principal established is that *full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination.*" (Emphasis ours.)

In like manner the Supreme Court later said.

"The immunity from prosecution, like the privilege which it supplants, pertains to a prosecution in the same jurisdiction." *Feldman* v. *United States*, 322 U. S., 487, 493, 88 L. Ed., 1408, 64 S. Ct., 1082, 154 A. L. R., 982.

And in the *Feldman case* Mr. Justice Frankfurter, speaking for the majority of the court, quoted Chief Justice Taney in *Abelman* v. *Booth*, 21 How., 506, 516, 16 L. Ed., 169, as follows.

"The powers of the general government, and of the state, although both exist and are exercised within the same [fol. 230] territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each

other, within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a state judge of a state court, as if the line of division was traced by landmarks and monuments visible to the eye."

Thus, the state and national governments are held by the Supreme Court of the United States to be separate sovereignties, and protection by one in granting sufficient immunity within its domain is sufficent to impose upon the witness the duty of testifying without invoking the privilege of self-incrimination, without regard to protection against the other within its separate domain.

Those decisions of the Supreme Court of the United States were occasioned by an attempted use of the rule protecting the individual from being forced to give testimony which might incriminate him. The rule of privilege with which they dealt is based upon the protection afforded the individual by the Fifth Amendment to the Constitution of the United States, which says:

"No person * * * shall be compelled in any criminal case to be a witness against himself * * *."

We have here under consideration an attempted use of the same rule except that in this instance the rule of privilege is based upon the protection afforded by Section 10, Article I of the Constitution of Ohio, which says:

"No person shall be compelled, in any criminal case, [fol. 231] to be a witness against himself."

"Where the provisions of the national and state Constitutions on any subject are identical, the state courts usually acquiesce in the decisions of the national courts interpreting and applying such provisions * * *." 11 American Jurisprudence, 741, Constitutional Law, Section 105, and cases cited.

We find no valid reasons for disagreeing with the interpretations and applications by the Supreme Court of the United States as hereinbefore set out, and conclude that the inability of the state of Ohio to provide immunity

from possible federal prosecution does not defeat the immunity statute here under consideration, which grants complete immunity from prosecution by the state.

It follows that the immunity from prosecution by the state of Ohio concerning any of the matters to which appellant might have testified afforded her as much protection from self-incrimination as the Constitution of Ohio guarantees, and her refusal to answer on the basis that she might incriminate herself was an attempted invocation of a rule of privilege which, by virtue of the immunity granted, was unavailable to her.

IV

Appellant argues that she could not have been guilty of contempt before the Ohio Un-American Activities Commission in view of the fact that the committee did not, upon each refusal to answer, specifically direct her to [fol. 232] answer, and that such direction was necessary in order to show contumaciousness on her part.

The question presented is whether a witness appearing before an investigating committee of the General Assembly, who refuses to answer a question *on the ground that to do so would be self-incriminating,* must be directed, after such refusal, to answer in order to be found guilty of contempt by a violation of Section 12845, General Code (Section 2917.42, Revised Code), which is a criminal statute.

This section, set out in full *supra,* reads in part:

"Whoever • • • refuses to answer a question pertinent to the matter under inquiry • • • shall be fined • • •."

The term, willful, or, deliberate, does not appear in the statute. The only basis for objection to a question propounded by the commission to be seen in the statute is the provision that the question must be "pertinent to the matter under inquiry." Nowhere in the statute can there be read or inferred a requirement that a witness must be directed to answer a question, upon his refusal to so do *on the ground of self-incrimination,* in order to show a violation of the statute.

In the case of *State v. Huffman*, 131 Ohio St., 27, 1 N. E. (2d), 313, this court, in the first paragraph of the syllabus, held:

"We have no common-law crimes in Ohio; neither do we have common-law criminal procedure. Consequently, if a [fol. 233] statute defining an offense in Ohio provides that it must be committed with a particular intent, such intent becomes a material element of the offense and must be alleged in the indictment and proved on trial. *On the contrary, if a statute defining an offense is silent on the question of intent, it is not necessary to allege and prove an intent to commit the offense.*" (Emphasis added.) See, also, *State* v. *McLean*, 121 N. C., 589, 28 S. E., 140, 42 L. R. A., 721; and *State* v. *Zichfeld*, 23 Nev., 304.

Section 60, General Code, grants immunity to all witnesses appearing before "a committee or subcommittee" of the General Assembly, or of either house thereof, "except as to a person who, *in writing*, requests permission to appear" or who "*in writing* waives the rights, privileges and immunities granted by this section."

Thus, the immunity granted by this section enveloped appellant like a cloak the instant she was sworn, and required not only an affirmative act on her part but an affirmative act *in writing* in order to be divested.

The basic reason for a direction to answer is to inform the witness that the committee is overruling the objection to the question on the ground of privilege against self-incrimination; that it, in effect, refuses the witness' claim that to answer would tend to incriminate him.

This, of course, presupposes a right of the witness to claim the privilege in the first instance. Here, however, in view of Section 60, there is no need for such protection, which the witness is presumed to know, as the witness is [fol. 234] presumed to know that he may be prosecuted, however unsuccessfully, under Section 12845, for *any* refusal to answer. The witness who attempts to invoke the privilege cannot later claim that he was uncertain as to his rights. Appellant was "bound rightly to construe the statute. * * * (Her) mistaken view of the law is no defense." *Sinclair* v. *United States*, 279 U. S., 263, 299, 73 L. Ed., 692, 49 S. Ct., 268?

Thus, the witness knew or was presumed to know that under the statute her invocation of the rule of privilege against self-incrimination was a useless act under the law, since such rule of privilege had been supplanted by a statute affording her sufficient immunity from prosecution to satisfy the protection against self-incrimination guaranteed by the Constitution. Her mere refusal to answer on such a basis constituted contempt, and the interpolation of such a frivolous objection imposed no duty upon the commission to inform her of what she already knew—that she had no right to refuse to answer on such grounds.

It is seen that a direction to answer in such a case would serve no substantial purpose. Although it may be true that the commission could have informed appellant that she was in contempt and subject to prosecution which might be avoided, at the sound discretion of the commission, if she chose to answer, an answer even at that point would, upon a subsequent trial, go only to show a mitigation of the contempt already committed.

It is axiomatic that neither ignorance of the law nor a mistake in its interpretation affords a valid defense in a [fol. 235] criminal prosecution. A witness cannot be heard to say in one breath that he knows enough of the law to claim the privilege against self-incrimination and in the next breath that he knows nothing of the immunity statute, or that he has misconstrued it.

Appellant argues that she refused to answer because she felt she was not afforded such full and complete immunity as to deprive her of the right to refuse on the ground of self-incrimination. Regardless of whether this be interpreted to show a willful and contumacious refusal to answer, it certainly indicates a deliberate refusal to answer under a mistaken interpretation of the law.

It is argued also that the *Quinn case, supra,* is, in effect, a mandate by the Supreme Court of the United States to all legislative bodies, both national and state, that they must specifically direct a witness to answer before he may be cited for contempt, and a directive to all judicial tribunals in the nation that such must be the case before a witness may be convicted of contempt.

An examination of the reasoning behind that decision compared with the reasoning behind the decisions in the instant cases shows such argument to be fallacious.

We are here interpreting the effect of a *state* immunity statute (Section 60, General Code) providing not only that testimony given by a witness shall not be used in a subsequent criminal proceeding but also that the witness shall not "be prosecuted or subjected to a penalty or forfeiture [fol. 236] for or on account of a transaction, matter or thing, concerning which he testifies"; and we are determining for the first time in regard to this particular statute that such protection is sufficient to supplant the rule of privilege against self-incrimination, i. e., that both the statute and the rule stem from the guaranty of protection from self-incrimination afforded by Section 10, Article I of the Constitution of Ohio, and that the scope of protection afforded by the former is sufficient to supplant the protection afforded by the latter.

This, however, is not the case with the federal immunity statute, Section 3486, Title 18, U.S. Code, which was applicable to the defendant in the *Quinn case.*

The first federal statute regarding the immunity of a congressional witness, Section 859, Revised Statutes, was enacted in 1857 and was almost identical in wording and effect with the first federal immunity statute regarding witnesses appearing before federal judicial tribunals, Section 860, Revised Statutes, which was enacted in 1868.

In 1892, the Supreme Court of the United States, in the case of *Counselman* v. *Hitchcock,* 142 U. S. 547, 35 L. Ed., 1110, 12 S. Ct., 195, held that Section 860 did *not* afford sufficient protection to supplant the right of a witness to refuse to answer on the ground of self-incrimination. See *United States* v. *Bryan,* 339 U.S. 323, 335 et seq., 94 L. Ed., 884, 70 S. Ct., 724, for a lucid history of Section 860 and its purpose and effect.

[fol. 237] The conclusions set out in the *Counselman case* have never been overruled, and in the *Quinn case* the Supreme Court said:

"Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under Section 192. Thus if he raises an objection to a certain question—for example, lack of pertinency or the privilege against self-incrimination—the committee may sustain the objection and abandon the ques-

tion, even though the objection might actually be without merit."

It is important to note here that the federal immunity statute which was applicable to the defendant in the *Quinn case*, in its original as well as its present form, provides a witness only with protection from *the use of his testimony against him* and not, as is provided by the Ohio statute, with *protection from prosecution* for matters concerning which he testified. For an interpretation of a federal statute very similar in wording to the Ohio statute, which is in complete accord with the conclusions herein reached, see *Brown v. Walker*, 161 U. S., 591, 40 L. Ed., 819, 16 S. Ct. 644. See, also, *Hale* v. *Henkel*, 201 U. S., 43, 66 *et seq.*, 50 L. Ed., 652, 26 S. Ct., 370.

The point derived from the above is that it has been recognized for approximately 63 years that a witness approaches a hearing before a *congressional body* with a recognized and legitimate right to refuse to answer on the ground of self-incrimination.

[fol. 238] It is apparent that, once a ligitimate right to refuse to answer on the ground of self-incrimination is recognized, a body of decisions should arise as to whether such refusal is founded upon sufficient reason (*Arndstein* v. *McCarthy, Marshal*, 254 U. S., 71, 72, 65 L. Ed., 138, 41 S. Ct., 26; *United States* v. *White*, 322 U. S., 694 88 L. Ed., 1542, 64 S. Ct., 1248, 152 A. L. R., 1202; *Hoffman* v. *United States*, 341 U. S., 79, 95 L. Ed., 1118, 71 S. Ct., 814; *United States* v. *Burr*, 25 Fed. Cas., 40, No. 14, 692e; *Blau* v. *United States*, 340 U. S., 159, 95 L. Ed., 170, 71 S. Ct., 233), whether the witness in fact invokes the rule of privilege (*Smith* v. *United States*, 337 U. S., 137, 93 L. Ed., 1264, 69 S. Ct., 1000; *Quinn* v. *United States, supra; Bart* v. *United States*, 349 U. S., 219, 99 L. Ed., 602, 75 S. Ct., 712; *Emspack* v. *United States*, 349 U. S., 190, 99 L. Ed., 585, 75 S. Ct., 687) and whether the witness's refusal to answer is contumacious, i. e., whether he is made aware that, although his right to refuse to answer is recognized, his reason in the particular instance is ruled invalid and his claim of privilege rejected (*In re Chapman*, 166 U. S., 661, 41 L. Ed., 1154, 17 S. Ct., 677; *McGrain* v. *Dougherty*, 273 U. S., 135, 71 L. Ed., 580, 47 S. Ct., 319; *Sinclair* v. *United States*, 279 U. S., 263, 73

L. Ed., 692, 49 S. Ct., 268; and the *Quinn*, *Bart* and *Emspack* cases, *supra*).

Imposing as is the body of decisions regarding these questions, it must be remembered that each is based fundamentally upon the premise that, since sufficient immunity is not afforded the witness by the federal statute, he has a ligitimate right to assert the privilege against self-incrimination. It must be remembered also that this basic premise results from the decision in *Counselman* v. *Hitchcock*, *supra*, which was an interpretation by the Supreme Court of the United States of the effect of a *federal* statute upon a *federal* constitutional provision.

[fol. 239]

The fact that the Supreme Court of the United States has construed the effect of a federal statute upon a portion of the federal Constitution in a certain manner, however, in no way precludes the highest tribunal of a state from construing the effect of a similar but not identical state statute (as hereinbefore set out) upon a similar provision of the state Constitution, particularly where it is well recognized that the operation of such constitutional provisions is directed exclusively and individually to the federal and the state governments, *respectively*.

"We (the Supreme Court of the United States) have nothing to do with the interpretation of the Constitution of the state and the conformity of the enactment of the Assembly to that Constitution; those questions are for the consideration of the courts of the state, and their decision of them is final. The Fifth Amendment to the Constitution of the United States is not restrictive of state, but only of national, action." *Hunter* v. *City of Pittsburgh*, 207 U. S., 161, [fol. 240] 176, 52 L. Ed., 151, 28 S. Ct., 40. See, also, *Missouri* v. *Dockery*, 191 U. S., 165, 48 L. Ed., 133, 24 S. Ct., 53, 63 L. R. A., 571; *Merchants' & Manufacturers' Bank* v. *Pennsylvania*, 167 U. S., 461, 42 L. Ed., 236, 17 S. Ct., 829; and *Gabrielli, a Minor*, v. *Knickerbocker*, 12 Cal., (2d), 85, 82 P. (2d), 391.

It follows that the *Quinn case*, admittedly based upon the assumption that the defendant therein had a right to refuse to give self-incriminating answers, is not controlling in any manner in the instant cases.

The conclusions herein are based upon a source of reasoning which is separate and distinct from that in the *Quinn*

case, to wit, an interpretation of the effect of a state statute upon a provision of a state Constitution, and when we conclude that, because of Section 60, General Code, appellant approached the hearing before the Ohio Un-American Activities Commission without a legitimate right to refuse to answer on the ground of self-incrimination, and that her refusal to answer on that ground constituted a violation of Section 12845, General Code, without further indication of criminal intent, we do not reach that point at which it becomes important to consider whether the commission overtly ruled upon an invalid assertion of the privilege, and, thus, the *Quinn case* is not only not controlling in this instance but it is inapplicable to the facts as well.

It is argued also that the chairman of the commission in some way contributed to appellant's misfortune by stat- [fol. 241] ing to her:

"Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.

"Mrs. Morgan: Yes.

"Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed."

Although the chairman obviously misstated the law, the question is whether such misstatement affected the alleged violation by Mrs. Morgan of Section 12845, General Code.

In order to find that the chairman's statement affected her *conviction*, we must necessarily find that it in some way affected appellant's *behavior at the hearing*. A thorough search of the record fails to disclose that this was the case.

Appellant indicated, in a prepared statement which she presented to the commission prior to the hearing, that she intended to "claim the protection of the Fifth Amendment and remain silent before this committee," and she refused to answer on that ground the 12 questions propounded to her *prior to the chairman's statement*. Her subsequent refusals to answer are made in the same words and manner as her prior refusals.

It is also interesting and significant to note that the chairman, at another point in the Morgan hearing, said, "Mrs. Morgan, are you aware of the fact that your failure

[fol. 242] to answer questions—some questions of this commission, might also *tend to put you in an embarrassing situation?*"

The only hypothesis consistent with the record of this hearing is that Mrs. Morgan was well aware of what she considered to be the law and her rights thereunder, and that such statement neither mislead her nor induced her to act in any manner other than that which she deliberately chose.

The state advances the theory that a direction by the commission to answer was unnecessary since a statement read by appellant just prior to being sworn, and later introduced into the record of the hearing, is alone sufficient to establish the contumacious intent in her refusal to answer. In the light of what we have said, however, concerning the necessity of a direction to answer, it is neither necessary to consider this premise nor to give such statement, which is highly abusive and vitriolic, the dignity of perpetuation in this opinion.

Thus, since the immunity statute precluded appellant's right to claim the rule of privilege against self-incrimination, and Section 12845, General Code (Section 2917.42, Revised Code), makes a refusal to answer questions pertinent to the matter under inquiry a misdemeanor, appellant's refusal to answer under the claim of the rule of privilege constituted a violation, and as a direction thereafter could serve no substantial purpose it was unnecessary.

We are all familiar with the excesses and abuses which led to the formulation of the common-law rule, the sub-
[fol. 243] stance of which has been incorporated into the Constitution of the United States and the Constitutions of the various states, granting each individual the right to refrain from giving testimony which may be used against him in a criminal prosecution. To expound further on this maxim and the necessity therefor would be to unnecessarily reiterate that which has already been well said many times.

This rule of privilege is a personal right whose sole purpose is to protect the individual from subjection to pressure, physical or mental, to give evidence or testimony *upon which may be based his subsequent punishment or forfeiture.* The belief is universal in civilized countries that it is reprehensible for an individual to be required by

any authority to convict himself through testimony or evidence pried from him against his will.

It must be remembered, however, that, although the people who founded our government did withhold from it certain personal privileges, justifiably, in the light of the lessons history teaches, such as the privilege against self-incrimination, they also pledged to it certain duties. Just a few of the duties owed the governments, both state and national, by each individual, who is an integral part thereof, are the duties of support by taxes, obedience to laws, defense in time of war and stress and service upon juries.

A breach of any of these duties is punishable by law on the theory that, ultimately, since the duties are owed by [fol.244] all, a breach by one constitutes an offense against the rest. It is thus that in many jurisdictions criminal actions are brought in the name of "the people" of the prosecuting political entity.

In like manner each citizen owes a duty to the legislative branch of the government to give it the benefit of any knowledge of facts of which he may be possessed in order that it may write the laws with as much back-ground information and intelligence as possible.

Of course, even this duty is not superior to the protection from self-incrimination, which must for good reason remain inviolate. But when the reason for the rule, i. e., the possibility of a prosecution or penalty imposed by the inquiring sovereign and based upon coerced testimony, is satisfied by a statutory grant of immunity which is as full and complete as is necessary under the law, the legislative branch of the government is thereby enabled to demand of the individual the performance of this duty free of a refusal to answer on the ground of self-incrimination, and may provide a penalty for the breach of such duty.

The argument that an immunity statute coupled with a statutory demand for pertinent testimony, regardless of whether it might, in the absence of immunity, be of an incriminating character, in effect amends the Constitution is without merit.

The fact is that the immunity legislation and the demand [fol. 245] for testimony cannot amend and do not violate the Constitution nor do they abridge the rule of privilege arising therefrom. A statutory grant of immunity which is

full and sufficient simply provides a witness by statute the protection against self-incrimination which the Constitution guarantees.

The Constitution and the rule of privilege merely safeguard the individual from being forced to give testimony or evidence which may be used against him in a criminal prosecution. Section 60 not only provides that the testimony given by a witness shall not be used as evidence in a criminal proceeding against him, but the statute provides further that the witness *shall not be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter or thing conerning which he testifies or produces evidence.*

It is seen that under such circumstances the state has seen fit to forfeit its right to prosecute a witness for his part in any criminal activity of which it becomes aware by virtue of testimony given by the witness before a legislative body in search of information. Thus, the witness is given more protection by immunity than is afforded him by the Constitution and the rule of privilege. Surely under these circumstances it is not improper for the government to call upon its citizens to perform an inherent duty free of a limitation the cause for which has been statutorily removed. [fol. 246] It is readily seen that if the government should decide to withdraw its grant of immunity to the witness it would instantly forfeit its right to testimony or evidence which might tend to incriminate him. There would then be no protection by immunity equal to the protection by privilege, and the constitutional rule of privilege would obtain in its full force and effect.

Where there is immunity granted, however, which is so full and sufficient as to supplant the protection afforded by the rule of privilege, the refusal of a witness to give pertinent testimony upon the ground of privilege can be considered no more than an attempt to block the legislative effort and the refusal to perform a duty owed the government by virtue of citizenship; and a breach of such duty may be punished as other breaches of duty owed the government.

In conclusion, we find:

I. It was within the power granted the General Assembly by Section 8, Article II of the Constitution of Ohio, author-

izing that body to obtain through committees or otherwise information affecting legislative action under consideration or in contemplation, to create the Ohio Un-American Activities Commission and to authorize it to function after sine die adjourment and to report to the following General Assembly; and, since the function and structure of such a body rather than its name determine its character, the fact that this commission had the function and structure of a select committee of the General Assembly rendered it, in [fol. 247] fact, a "select committee" thereof entitled to all the rights and prerogatives of select committees. One of such prerogatives is the right to bring a contempt action under the provisions of Section 12845, General Code (Section 2917.42, Revised Code), unless the committee is specifically precluded from doing so by the Legislature. No such preclusion is evident in the permissive provisions of Section 76-32, General Code (Section 103.35, Revised Code), which merely provides this particular commission with an alternative method of punishing for contempt.

II. A witness appearing before a committee of the General Assembly, who objects to a propounded question, the objection being in language which the committee might reasonably be expected to understand as an attempt to invoke the rule of privilege against self-incrimination, whether it be by a reference to the Constitution of the United States or the Constitution of Ohio, thereby invokes any privilege to which he may be entitled under either, and appellant, by refusing "under the Fifth Amendment" to answer questions, did in fact invoke any privilege to which she would ordinarily be entitled under the Constitution of Ohio.

III. Appellant's invoking of the rule of privilege in this case, however, was ineffective, since the immunity granted by Section 60, General Code (Section 101.44, Revised Code), is so full and complete as to satisfy the protection against self-incrimination guaranteed by the Constitution of Ohio and to supplant the privilege arising therefrom, and it [fol. 248] imposed upon appellant the duty to give her testimony free of a refusal based upon this rule of privilege.

IV. A direction to answer, after appellant's refusal upon the ground of self-incrimination, was unnecessary since the immunity granted her precluded the possibility of justify-

ing a refusal on this ground. The commission asked questions which were pertinent, and the refusal alone of the witness to answer on the ground of self-incrimination constituted contempt.

The issue apparent in cause No. 34361 which is not involved in the Morgan appeal is whether the Ohio Un-American Activities Commission was unconstitutional in that the General Assembly had delegated to it powers and functions belonging exclusively to the judiciary of Ohio by virtue of Section 1, Article IV of the Constitution of Ohio.

At the outset it is obvious from reading those sections of the General Code relating to the Un-American Activities Commission that there was absolutely no attempt to give the commission any direct judicial authority whatsoever.

Section 76-32, General Code (Section 103.35, Revised Code), in effect specifies that any of the acts described in Section 12137, General Code (Section 2705.02, Revised Code), which may be generally described as statutorily defined contempts of court, shall be contempts of the legislative body and punishable at the behest of the commission under the procedure set out in the following sections, i. e., Sections 12138 to 12146, General Code (Sections 2705.03 to 2705.09, Revised Code).

[fol. 249] The defendants were found guilty of violations of subdivision 3 of Section 12137. This section is clearly severable and reads as follows, so far as it affects cause No. 34361:

"A person guilty of any of the following acts may be punished as for a contempt:

" • • •

"3. A *failure* to obey a subpoena duly served, or a refusal to be sworn, or *to answer as a witness, when lawfully* required." (Emphasis ours.)

It must be noted that, since Raley, Stern and Brown were convicted of violating the provisions of subdivision 3 of Section 12137, they have no interest in and cannot question the constitutionality of the power given the commission with regard to those parts of the statute which have nothing whatsoever to do with their convictions, regardless of whether certain of the acts which "may be punished as for a contempt" under this section and which are admittedly

contempts of court could also be construed contempts of a legislative body, or made so by legislative enactment.

"* * * a defendant charged with the violation of a statute, but not charged with any act coming under a certain severable section of the statute, is without the interest necessary to question the validity of that section." 11 American Jurisprudence, 755, Constitutional Law, Section 111. See, also, *State* v. *Hill*, 168 La., 761, 123 So., 317, 69 A. L. R., 574. [fol. 250] The offense set out in the "severable section" of Section 12137, of which defendants were found guilty, is the refusal to answer as a witness when lawfully required to do so. The *power* of the General Assembly to label such refusal an offense when committed before a duly constituted legislative body and to authorize such body to cause proceedings to be instituted in a court of law for the punishment of such refusal to answer arises directly from the provisions of Section 8, Article II of the Constitution of Ohio, and not from other constitutional powers by virtue of which the General Assembly enacts legislation pertaining to courts of law.

It is seen that, regardless of the existence of Sections 12137 to 12146, General Code (Sections 2705.02 to 2705.09, Revised Code), the General Assembly could enact statutes, applying solely to legislative bodies, providing that a failure to obey a subpoena duly served or a refusal to be sworn or to answer as a witness when lawfully required to do so would constitute an offense punishable by a court of law, and could prescribe the punishment which would follow a conviction for violating such statutes, which could be similar to if not in the exact terms as the punishment prescribed in Sections 12142 and 12143, General Code (Sections 2705.05 and 2705.06, Revised Code), which are the statutes under which sentences were or could have been imposed in the instant cases. Such statutes, in the absence of other defects, would be constitutional exercises of the power given the General Assembly by Section 8, Article II, *supra*.

[fol. 251] In this instance it is seen that the General Assembly merely exercised the power given it by Section 8, Article II, in making by reference that which is admittedly a statutory offense with regard to the judiciary a statutory offense with regard to this body of the General Assembly, by including, by reference, the offense described in sub-

division 3 of Section 12137, General Code (Section 2705.02 (c), Revised Code), in Section 76-32, General Code (Section 103.35, Revised Code).

The General Assembly having the power to define the offense has the power to prescribe the punishment therefor and the procedure to be followed by its bodies in imposing such punishment, and this it has done in this instance in the same manner in which it chose to define the offense, i. e., by reference.

The fact that the procedure outlined provides for the institution of proceedings in a court of law under specific sections of the General Code certainly indicates an acquiescence to the judiciary rather than an attempted usurpation of its power.

Thus, the inclusion by reference in Section 76-32, General Code (Section 2705.02, Revised Code), of the Un-American Activities Commission sections, of paragraph 3 of Section 12137, General Code (paragraph 3 of Section 2705.02 Revised Code), providing that one "may be punished as for a contempt" for the "refusal * * * to answer as a witness when lawfully required," and Sections 12138 to 12146, General Code (Sections 2705.03 to 2705.09, Revised Code), of the Chapter on Contempt of Court, setting out the pro-[fol. 252] cedure to be used in proceedings based upon such refusal and the punishment upon conviction therefor, is a valid exercise of the legislative power under Section 8, Article II of the Constitution, empowering the Legislature to compel the attendance and testimony of witnesses. Furthermore, it is clearly not a delegation of judicial power to the Un-American Activities Commission but constitutes merely a definition as to what shall constitute a contempt of such commission and a method of procedure by which proceedings may be instituted by the commission in a judicial tribunal for the punishment of the contempt.

For the reasons given in the Morgan appeal, the defendants *were* lawfully required to answer the questions set out in the indictments, and their refusal to answer on the ground of self-incrimination constituted violations of paragraph 3 of Section 12137, General Code, which, by virtue of Section 76-32, General Code, applies to refusal to answer when lawfully required by the Ohio Un-American Activities Commission.

It follows from what has been said that the judgment of the Court of Appeals for Franklin County in cause No. 34311, affirming the judgment of the trial court which dismissed certain counts of the indictment for repetition and impertinency and found appellant guilty upon the remaining counts, should be, and it hereby is, affirmed; and that the judgment of the Court of Appeals for Hamilton County in cause No. 34361 should be, and it hereby is, affirmed.

Judgments affirmed.

[fol. 253] WEYGANDT, C. J., ZIMMERMAN and BELL, JJ., concur.

HART and TAFT, JJ., dissent.

STEWART, J., dissents in part.

OPINION: HART, J., dissenting.

At the outset, let me say that I have no sympathy with the positions of the defendants, the espousal of which makes it necessary, in their view, to refuse to answer the questions submitted by the legislative committee. However, the defendants are entitled to all rights guaranteed to them by the constitutions and the laws of the land.

My dissent is directed to the subject discussed in division III of the majority opinion. The question involved is whether, even though the Ohio immunity statute therein referred to is sufficient to impose upon a witness the duty to testify without the necessity of invoking the privilege as to self-incrimination, the witness nevertheless has a right under the Fifth Amendment to refuse to answer questions in a state proceeding because answers to such questions may be used to incriminate him in a federal prosecution wherein the Ohio immunity statute would not operate to given him protection.

The majority opinion says:

"* * * the state and national governments are held by the Supreme Court of the United States to be separate sovereignties, and protection by one in granting sufficient immunity within its domain is sufficient to impose upon the [fol. 254] witness the duty of testifying without invoking

the privilege of self-incrimination, without regard to protection against the other within its separate domain.

"• • •

"We find no valid reason for disagreeing with the interpretations and applications by the Supreme Court of the United States, as hereinbefore set out, and conclude that the inability of the state of Ohio to provide immunity from possible federal prosecution does not defeat the immunity statute here under consideration, which grants complete immunity from prosecution by the state."

In the case of *Counselman* v. *Hitchcock*, 142 U. S., 547, 35 L. Ed., 1110, 12 S. Ct., 195, the Supreme Court had before it the question of the right of a witness to refuse to testify before a federal grand jury in the Northern District of Illinois concerning an alleged violation of an "act to regulate commerce," on the ground that his answer, if given, would tend to incriminate him. For refusal to answer Counselman was incarcerated. He brought a habeas corpus action to test his right to refuse to testify. In the opinion of the Circuit Court it was held that, although under the Fifth Amendment no person can be compelled to disclose facts before a court or grand jury which might subject him to a criminal prosecution, nevertheless, since the immunity provided by Section 860 of the Revised Statutes of the United States was coextensive with that of the Constitution, Counselman was entitled to no privilege under the Constitution. Section 860 of the Revised Statutes pro- [fol. 255] vided that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence or in any manner used against him in any court of the United States in any criminal proceeding or for the enforcement of any penalty or forfeiture.

The Supreme Court reversed the judgment of the Circuit Court and in the course of its opinion said:

"It remains to consider whether Section 860 of the Revised Statutes removes the protection of the constitutional privilege of Counselman. That section must be construed as declaring that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal

proceeding, or for the enforcement of any penalty or forfeiture. It follows, that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence or used against him or his property in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could [fol. 256] not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.

* * *

"* * *

"It is quite clear that legislation can not abridge a constitutional privilege, and that it can not replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. It is to be noted of Section 860 of the Revised Statutes that it does not undertake to compel self-criminating evidence from a party or a witness. In several of the state statutes above referred to, the testimony of the party or witness is made compulsory, and in some either all possibility of a future prosecution of the party or witness is distinctly taken away, or he can plead in bar or abatement the fact that he was compelled to testify.

"We are clearly of opinion that *no statute which leaves the party or witness subject to prosecution after he answers the criminating questions put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States.* Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. [fol. 257] *In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity*

against future prosecution for the offense to which the question relates.

* * *" (Italics supplied.)

Specifically, the court in that case held, as stated in the headnotes to the S. Ct. report:

"1. The privilege given by the Fifth Amendment to the Constitution that no person shall be compelled in any criminal case to be a witness against himself extends to a proceeding before a grand jury.

"* * *

"3. Section 860 of the Revised Statutes, which provides that the evidence of a person shall not be used against him in any proceeding for a crime or penalty, or forfeiture, does not take away his privilege, given by the Constitution, that he shall not be compelled in any criminal case to be a witness against himself.

"4. A witness is protected by the constitutional provision from being compelled to disclose the circumstances of his offense, or the sources from which or the means by which evidence of its commission, or of his connection with it, may be obtained or made effectual for his conviction.

"5. Legislation cannot abridge a constitutional privilege, and cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect.

"6. No statute which leaves the party or witness subject [fol. 258] to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States.

"* * *

"8. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates."

The judgment of the Supreme Court of the United States in the *Counselman case* was approved in the later case of *United States* v. *Bryan*, 339 U.S., 323, 94 L. Ed., 884, 70 S. Ct., 724, in which the provisions of Section 859 of the Revised Statues of the United States were under consideration. The court said:

"We need not set out the history of the statute in detail. It should be noted, however, that its function was to provide

an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought that witnesses could be compelled to give self-incriminating testimony. That purpose was effectively nullified in 1892 by this court's decision in *Counselman* v. *Hitchcock* * * * holding that R. S. Section 860, a statute identical in all material respects with R. S. Section 859, was not a sufficient substitute for the constitutional privilege of refusing to answer self-incriminating questions. Under that decision, a witness who is offered only the partial pro-
[fol. 259] tection of a statute such as Sections 859 and 860—that his testimony may not be used against him in subsequent criminal proceedings—rather than complete immunity from prosecution for any act concerning which he testifies may claim his privilege and remain silent with impunity."

It is true that the Ohio immunity statute provides not only that the testimony of a witness before such a committee shall not be used as evidence in a criminal proceeding against him, but that a person shall not "be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which he so testifies." However, although a witness may refuse to testify in a federal court as to matters tending to incriminate him, he can not prevent the use in a federal court of testimony of the same character voluntarily given by him in a state court under a state immunity statute. *Feldman* v. *United States*, 322 U. S., 487, 88 L. Ed., 1408, 64 S. Ct., 1082, 154 A. L. R., 982.

How then, nothwithstanding some apparent obiter in decisions of the federal Supreme Court, can a state immunity statute, which compels a witness to answer questions which incriminate him and which admittedly in turn may be used to incriminate him in a federal prosecution where the state immunity statute even against prosecution is wholly inoperative to protect him, be valid in view of the constitutional rights of the witness under the Fifth Amendment to the federal Constitution among which is the over-all right to avoid compulsory self-incrimination?

[fol. 260] In the instant cases, where the claimed subversive acts of the defendants as against the state government may also be the basis of a prosecution by the federal gov-

ernment for subversive acts against it or the states, I am of the opinion that under the protection of the Fifth Amendment these defendants could lawfully refuse to answer incriminating questions before the legislative committee, notwithstanding the purported protection of the state immunity statute.

OPINION: STEWART, J., dissenting in part.

I could well concur in the syllabus, majority opinion and judgments in the present cases were it not for a glaring feature of the record, which has been glossed over in the majority opinion and to which I shall presently allude.

It must be remembered that the defendants were not tried upon any charges of Communistic activities or upon the abhorrent statement made by Mrs. Morgan, the sole charge against each of them being contempt, which the General Assembly has made a mere misdemeanor punishable only by a fine (Section 12845, General Code (Section 2917.42, Revised Code), in the Morgan case) and by a fine or not more than $500 or imprisonment for not more than 10 days, or both (Section 12142, General Code (Section 2705.05, Revised Code), in the Raley, Stern and Brown case). Therefore, the vital question in the cases is, were the defendants guilty of contempt by standing on their claim of self-incrimination in refusing to answer some of [fol. 261] the questions propounded to them by the commission?

The majority of the court reasons that, since the Ohio immunity statute gave the defendants immunity from the use of any of their testimony as evidence in any criminal proceeding in this state, and since the Supreme Court of the United States has decided that lack of state power to give witnesses protection against federal prosecution does not defeat the effect of a state immunity statute to abolish protection against self-incrimination, the Ohio immunity statute deprived the defendants of the protection against self-incrimination afforded by the Constitution; and that, since defendants were presumed to know the law, they were in contempt by not answering the questions propounded to them by the commission, because their right of protection against self-incrimination had been abolished.

Ordinarily, this reasoning would be quite logical, but, in

the present cases, assuming that defendants were mistaken in their right to rely upon protection against self-incrimination, the commission was likewise mistaken as to the state of the law.

The commission was composed in part of able and experienced lawyers, and it hired special counsel, and yet the defendants were informed by the chairman of the commission that they had a right to rely upon their constitutional privilege against self-incrimination.

In the Morgan case, the chairman of the commission stated: "Mrs. Morgan, I should like to advise you under the [fol. 262] Fifth Amendment you are permitted to refuse to answer questions that might tend to incriminate you."

Even if the chairman was mistaken as to the law and the effect of the Ohio immunity statute, and Mrs. Morgan was likewise mistaken, how can it be said that she was in contempt of the commission in strictly following its direction and admonition? The point is further emphasized by the fact that in every instance when she refused to answer a question, claiming protection against self-incrimination, she was never directed to answer the question but the interrogator immediately proceeded with another inquiry.

With reference to the Raley, Stern and Brown case, the chairman of the commission was a witness and testified as follows:

"It was the policy of the commission not to press questions which we felt would be of an incriminating nature. For instance, whenever a witness was asked a question—I believe every witness before the commission was asked the question—are you or have you ever been a member of the Communist Party, and if the witness refused to answer that question, we did not press it. Frequently I made statements which indicated the policy of the commission. Whether it was to half of the witnesses before the commission or not, I don't know. Probably less than half. But the statement was, 'We will not require you to answer questions which may incriminate yourself, but we want it clearly understood that you may not refuse to answer questions on the ground it would incriminate some one else.' [fol. 263] And I think through the record generally, although not probably always when I made the statement with respect to one it included the other."

It seems to me that, since the defendants were apprised by the commission at the time they were testifying that they had a right to refuse to answer questions which might incriminate them, they could not possibly in following the admonition of the commission be in contempt of it except possibly as to the questions which the defendants were directed to answer.

In such a situation the case of *Quinn* v. *United States*, 349 U. S., 155, 99 L. Ed., 964, 75 S. Ct., 668, which was properly cited in the majority opinion in support of the third paragraph of the syllabus, is controlling with reference to the necessity of demanding an answer from a witness testifying before an investigating committee before the refusal of the witness to answer can place him in peril of prosecution for contempt.

The *Quinn case* involved a witness, before a federal legislative committee, charged with contempt. Speaking for the court, Mr. Chief Justice Warren said:

"Section 192, like the ordinary federal criminal statute, requires a criminal intent—in this instance, a deliberate, intentional refusal to answer. This element of the offense, like any other, must be proved beyond a reasonable doubt. Petitioner contends that such proof was not, and can not be, made in this case.

[fol. 264] "* * * in short, unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under Section 192 for refusal to answer that question.

"Was petitioner so apprised here? At no time did the committee specifically overrule his objection based on the Fifth Amendment; nor did the committee indicate its overruling of the objection by specifically directing petitioner to answer. In the absence of such committee action, petitioner was never confronted with a clear-cut choice between compliance and noncompliance, between answering the question and risking prosecution for contempt. At best he was left to guess whether or not the committee had accepted his objection."

In the Morgan indictment the charges are that she did "unlawfully and willfully refuse to answer."

Under the situation in the present cases, it seems clear to

me that the defendants, after being apprised by the commission that they had a right to rely upon the protection against self-incrimination, could not be in contempt of the commission except as to the few questions which two of them were directed to answer.

OPINION: TAFT, J., dissenting.

In the *Morgan case* (No. 34311) the defendant was indicted under Section 12845, General Code (Section 2917.42, Revised Code), which reads.

[fol. 265] "Whoever, having been subpoened or ordered to appear before either branch of the General Assembly, or before a standing or select *committee of the General Assembly*, or either branch thereof, fails so to do, or, having appeared, refused to answer a question pertinent to the matter under inquiry * * *." (Emphasis added.)

If the General Assembly, by what it said in providing for the Un-American Activities Commission, expressed an intention that it should be regarded as something other than "a standing or select committee of the General Assembly," then the foregoing statute did not authorize this defendant's indictment. By Section 8, Article II of the Constitution of Ohio, authority is provided for obtaining information affecting legislative action "through committees *or otherwise.*" It was not necessary therefore for the General Assembly to obtain the information to be secured by the Un-American Activities Commission through a "committee." It could obtain it "otherwise." *State, ex. rel., Herbert* v. *Ferguson, Aud.*, 142 Ohio St., 496, 52 N. E. (2d), 980.

"Under "Part First: Political, Title II, Legislative; Chapter 1, General Assembly," of the General Code, there is a subtitle "Powers of Committees." See "An Act to Revise and Consolidate the General Statutes of Ohio," passed by the General Assembly of Ohio, February 14, 1910, and approved by the Governor, February 15, 1910. Under this subtitle are six sections. Provision is made by Section 57 for subpoenas for witnesses and for books, papers and records, by Section 58 for service thereof, by [fol. 266] Section 59 for punishment for disobeying a subpoena or refusing to answer a pertinent question, by Section 60 for immunity with respect to testimony "before a

committee or subcommittee," by Section 61 for fees of sheriffs and witnesses, and by Section 62 for the administration of oaths. From a reading of these sections, it is apparent that they are to deal as stated therein with "a standing or select committee of the General Assembly or of either house thereof" or a "subcommittee" of such a "committee." Section 57, General Code. The word "committee" is used in each section and appears 19 times in the six sections. The word "commission" is not used anywhere in these sections.

Provision was first made by statute for "the Un-American Activities Commission" by enactment of Sections 76-28 to 76-35, inclusive, General Code, in 1951. Section 76-28 states that "there is hereby created an Un-American Activities *Commission in the legislative branch of the government.*" (Compare this with the words "a standing or select committee of the General Assembly or of either house thereof" found in Section 57, General Code.) Thereafter, the word "commission" appears in each of the eight statutory sections (Sections 76-28 to 76-35, inclusive, General Code) and it appears a total of 29 times in those sections. Nowhere in those sections is there any suggestion that the General Assembly regarded this "commission" as a "committee." It studiously and successfully avoided the use of the word "committee." This was prob-
[fol. 267] ably done because this "commission" was to act after the sine die adjournment of the General Assembly, and the General Assembly was probably fearful that a "committee" of the General Assembly would cease to have any existence on and after such adjournment, as apparently held by the decision of this court in *Gayman* v. *State, ex rel. Rulison, Pros. Atty.*, 79 Ohio St., 444, 87 N. E., 1136 (affirming 11 C. C. (N. S.), 257, 21 C. D., 59).

Specific provisions were made in the act creating this "commission" for administering oaths, issuing subpoenas, compensation of witnesses, and punishment of witnesses disobeying a subpoena or refusing to testify. If the "commission" were a "select committee of the General Assembly," such provisions would have been unnecessary because of the provisions of Sections 57 to 62, General Code. However, no provision was made as to immunity with respect to testimony before such "commission"; and the provision

made for punishment of witnesses before the "commission" (Section 76-32, General Code) was different from that which was provided for that purpose with respect to "committees" by Section 59, General Code.

My conclusion therefore is that the General Assembly clearly expressed an intention that the Un-American Activities Commission should be regarded as something other than a "committee of the General Assembly." It follows that Section 12845, General Code, did not authorize the indictment in the *Morgan case.*

In the *Raley case* (No. 34361), for the purpose of escap-[fol. 268] ing the contention that the witnesses should have been directed to answer questions after their claims of privilege (see *Quinn* v. *United States,* 349 U. S., 155, 99 L. Ed., 565, 75 S. Ct., 668; *Emspak* v. *United States,* 349 U. S., 190, 99 L. Ed., 585, 75 S. Ct., 687; and *Bart* v. *United States,* 349 U. S., 219, 99 L. Ed., 602, 75 S. Ct., 712), the decision of the majority is rested upon the premise that Section 60 (quoted so far as pertinent under IV in the majority opinion) grants immunity with respect to testimony before the Un-American Activities Commission. From the words of that section it is clear that it relates only to "testimony * * * before a committee" of the General Assembly or of either house thereof or a subcommittee of such a "committee." Since, as hereinbefore pointed out, the General Assembly clearly expressed an intention that the Un-American Activities Commission should be regarded as something other than such a "committee," the premise relied upon by the majority will not support their decision. There is no statutory grant of immunity with respect to testimony before the Un-American Activities Commission.

[fol. 269] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO

No. 34,311

(164 O. S., 529)

ANNA H. MORGAN, Appellant,

vs.

STATE OF OHIO, Appellee

EXCERPTS FROM NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 11, 1956

[fol. 270] I. Notice is hereby given that Anna H. Morgan, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Ohio Supreme Court March 14, 1956, denying the application for rehearing of the Ohio Supreme Court's decision of February 23, 1956, affirming the judgment of conviction entered herein on May 3, 1954, by the Court of Common Pleas for Franklin County, Ohio, and affirmed by the Court of Appeals for the Second Judicial District of Ohio on November 12, 1954.

This appeal is taken pursuant to 28 U.S.C.A., Sec. 1257 (2).

Appellant was convicted of the crime of contempt for refusing to testify before the Ohio General Assembly or a committee thereof, in violation of Ohio Revised Code, Section #2917.42 (formerly Ohio General Code Section #12845) was fined $100.00 on each of the following counts: 1, 3, 4, 5 and 6; fines were suspended on counts 8 through 28, 30 through 34, and 37. Appellant is present enlarged on bail in the sum of $1,000.00.

III. The following questions are presented by this appeal:

[fol. 271] 1. Whether Sec. 103.34(1) of the Ohio Revised Code creating the powers and duties of the Ohio Un-American Activities Commission is unconstitutional because it legislates in the area of securing the government against

subversion, which is an area in which Congressional action has superseded state power.

2. Whether Sec. 103.34(1) of the Ohio Revised Code creating the powers and duties of said Commission is unconstitutional because it legislates in the areas of national security and foreign relations which are exclusively within the jurisdiction of the federal government.

3. Whether Sec. 103.34(2) of the Ohio Revised Code creating the powers and duties of said Commission is unconstitutional because it provides for the "disclosing" of persons and groups found to be subversive without safeguards as required by the guarantee of due process of law in the Fourteenth Amendment to the Constitution of the United States of America.

4. Whether the state immunity statute, Ohio Revised Code Section #101.44, is not unconstitutional as a denial of the privilege against self-incrimination guaranteed in the Federal Constitution (Fifth and Fourteenth Amendments), and as a denial of due process of law under the Fourteenth Amendment because it requires disclosures about matters which may be the basis for federal prosecution.

5. Whether appellant-witness was entrapped during her appearance before the said Commission by statements of the Commission chairman that she could claim the privilege against self-incrimination as to questions which she was later indicted for refusing to answer, in violation of the due process clause of the Fourteenth Amendment.

[fol. 272-273] 6. Whether appellant's conviction for contempt for refusal to answer questions which she had not been directed to answer following her initial assertion of the privilege against self-incrimination constituted denial of due process of law guaranteed by the Fourteenth Amendment.

7. Whether appellant was denied due process of law under the Fourteenth Amendment through her conviction for contempt based on the state immunity statute (Ohio Revised Code Section #101.44) which compels testimony without granting complete immunity from federal prosecution for disclosures made.

8. Whether appellant's conviction for contempt for refusal to answer questions concerning her political beliefs,

activities, affiliations, and the subject matter discussed at meetings she allegedly attended constituted the denial of rights guaranteed by the First and Fourteenth Amendments to freedom of speech, thought and assembly.

9. Whether appellant's conviction for contempt for refusal to answer questions concerning a petition addressed to the United Nations which she allegedly signed constituted the denial of rights, privileges and immunities of citizens to petition the government for a redress of grievances guaranteed by the First and Fourteenth Amendments.

Ann Fagan Ginger, 170 New York Ave., #26, Brooklyn 16, N.Y. Thelma C. Furry, Second Natl. Bldg., Akron 8, Ohio, Attorneys for Anna H. Morgan, appellant.

[fol. 274] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 275] **Supplemental Transcript On Remand**

In the Supreme Court of Ohio, January Term, 1955

No. 34311

Attorneys

Samuel DeVine, Earl W. Allison, Asst. Pros. Atty. Columbus, Ohio. Ann Fagan Ginger, 170 New York Ave. #26, Brooklyn 16, N.Y. Thelma C. Furry, 815 2nd National Bldg., Akron 2, Ohio.

Title Of Case

THE STATE OF OHIO, Plaintiff-Appellee,

v.

ANNA H. MORGAN, Defendant-Appellant

Action

Appeal from the Court of Appeals of Franklin County.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS OF FRANKLIN COUNTY TO CERTIFY ITS RECORD

MEMORANDA OF PLEADINGS, &C., FILED, WRITS ISSUED, &C., JUDGMENTS, ORDERS AND DECREES

Docket Entries

Date

Jun. 22, 1956—Certified transcript of record sent to Thelma Furry for submission to the Supreme Court of United States. 12-13-57 Returned.

Jul. 27, 1957—Mandate from U. S. Supreme Court received and filed; cause vacated with costs and remanded to supreme court of Ohio.

Nov. 14, 1957—Non-printed brief of State of Ohio upon reconsideration filed. 11-25-57 Proof of service filed.

Dec. 30, 1957—Appellants non-printed brief filed.

Feb. 11, 1958—On remand from the Supreme Court of United States. Former Judgment adhered to. Journal 42, page 502-503.

Feb. 24, 1958—Application for rehearing and acknowledgement of service filed.

Mar. 5, 1958—Rehearing Denied. Journal 42, page 520.

Apr. 29, 1958—Notice of Appeal to U. S. Supreme Court filed and proof of service filed.

[fol. 276] JOURNAL ENTRIES

Journal 42, Pages 502-503

Appeal from the Court of Appeals of Franklin County

This day this cause came on for consideration on the Mandate of the Supreme Court of the United States received

and filed herein July 24, 1957, remanding the cause to this Court for further consideration, said Mandate being in the words and figures following, to-wit:

MANDATE OF THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Whereas, lately in the Supreme Court of the State of Ohio, before you, or some of you, in a cause between the State of Ohio, plaintiff-appellee and Anna H. Morgan, defendant-appellant, No. 34311, wherein the judgment of said Supreme Court duly entered on the 23rd day of February A. D. 1956 is in the following words, viz:

'This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Franklin County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended taxed at $ ————.

Ordered, That a special mandate be sent to the Court of Common Pleas of Franklin County, to carry this Judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Franklin County, "for entry." "

as by the inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord One Thousand nine hundred and fifty-six, the said cause came on to be heard before the Supreme Court of the United States on the transcript of record, and was duly submitted.

On Consideration whereof, It is ordered and adjudged by this Court that the judgment of the said supreme court, in this cause be, and the same is hereby vacated with costs.

It is further ordered that this cause be, and the same is hereby, remanded to the Supreme Court of Ohio for consideration in the light of Sweezy v. New Hampshire by Wyman, attorney general, No. 175, October Term, 1956, decided June 17, 1957 and Watkins v. United States, No. 261 October Term, 1956, decided June 17, 1957.

June 24, 1957

[fol. 277] And the same is hereby remanded to you, the said judges of the said Supreme Court of the State of Ohio, in order that such proceedings may be had in the said cause, in conformity with the judgement and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the twenty-fourth day of July, in the year of our Lord One Thousand nine hundred and fifty-seven.

Cost of case.

Clerk $100.00

The above amount to be paid direct to Clerk, U.S. Supreme Court, Washington, D. C.

John T. Fey, Clerk of the Supreme Court of the United States, By (S.) R. J. Blanchard, Deputy."

Filed July 27, 1957. Supreme Court of Ohio, Elliot E. Welch, Clerk.

In compliance with the mandate of the Supreme Court of the United States this cause came on to be considered

in the light of the decision of the Supreme Court of the United States in the case of Sweezy v. New Hampshire, 354 U.S., 234, and the case of Watkins v. United States 354 U. S., 178 and was argued by counsel. On consideration whereof, it is ordered and adjudged that this court does not find enough similarity with the Sweezy and Watkins cases to warrant a change in its former judgment.

It is further ordered that the judgment of this court as reported in 164 O.S., 529, be and the same hereby is, adhered to.

Ordered, That a special mandate be sent to the Court of Common Pleas of Franklin County to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Court of Appeals of Franklin County, "for entry."

Journal 42, Page 520

APPLICATION FOR REHEARING

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

[fol. 278] IN THE SUPREME COURT OF OHIO

34311

THE STATE OF OHIO, Appellee,

v.

MORGAN, Appellant

34361

THE STATE OF OHIO, Appellee,

v.

RALEY ET AL., Appellants

OPINION ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES—February 11, 1958

These two causes were before this court on appeals from the Courts of Appeals for Franklin and Hamilton Counties,

resulting in judgments affirming the judgments of the Courts of Appeals and reported in 164 Ohio St., 529, 133 N. E. (2d), 104. From those judgments appeals were taken to the Surpeme Court of the United States. That court, in two short *per curiam* opinions (*Morgan* v. *Ohio*, 354 U. S., 929, 1 L. Ed. (2d), 1535, 77 S. Ct., 1403, and *Raley* v. *Ohio*, 354 U. S. 929, 1 L. Ed. (2d) 1532, 77 S. Ct., 1391), vacated the judgments of this court and remanded the causes "for consideration in the light of *Sweezy* v. *New Hampshire*, 354 U. S., 234, and *Watkins* v. *United States*, 354 U. S., 178."

PER CURIAM. In compliance with the mandates of the Supreme Court of the United States, this court has considered the causes in the light of the *Sweezy* and *Watkins* cases and do not find enough similarity to warrant a change in our former judgments. The former judgments of this court as reported in 164 Ohio St. 529, are adhered to.

Former judgments adhered to.

Weygandt, C. J., Zimmerman, Matthias and Bell, JJ., concur.

TAFT, J., dissenting. I have no sympathy for the attitude and conduct of these defendants. However, for the reasons briefly stated in my dissenting opinion at the time of the previous hearing of these cases, it is my firm belief that this court cannot affirm the judgment of the Court of Appeals in either case without adding provisions to our stat- [fols. 279-285] utes which were never enacted by the General Assembly. Under the Ohio Constitution, this court has no such legislative authority.

[fol. 286] [File endorsement omitted]

IN THE SUPREME COURT OF OHIO

No. 34,311

(164 O. S., 529, 167 O. S., 295)

ANNA H. MORGAN, Appellant,

vs.

STATE OF OHIO, Appellee

EXCERPTS FROM NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 29, 1958

[fol. 287] I. Notice is hereby given that Anna H. Morgan, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Ohio Supreme Court March 5, 1958, denying the application for rehearing of the Ohio Supreme Court's decision of February 11, 1958, in which the Court, in compliance with the mandates of the Supreme Court of the United States of July 24, 1957, considered the cause in the light of the *Sweezy* and *Watkins* cases (U.S.S.C., Nos. 175 and 261, Oct. Term, 1956) and adhered to its judgment of March 14, 1956, denying the application for rehearing of the Ohio Supreme Court's decision of February 23, 1956, affirming the judgment of conviction entered herein on May 3, 1954, by the Court of Common Pleas for Franklin County, Ohio, and affirmed by the Court of Appeals for the Second Judicial District of Ohio on November 12, 1954.

This appeal is taken pursuant to 28 U.S.C.A., Sec. 1257 (2).

Appellant was convicted of the crime of contempt for refusing to testify before the Ohio General Assembly or a committee thereof, in violation of Ohio Revised Code, Section #2917.42 (formerly Ohio General Code Section #12845) and was fined $100.00 on each of the following counts: 1, 3, 4, 5 and 6; fines were suspended on counts 8 through 28, 30 through 34, and 37. Appellant is presently enlarged on bail in the sum of $1,000.00.

[fol. 288] III. The following questions are presented by this appeal:

1. Whether Section 103.34(1) of the Ohio Revised Code is repugnant to the supremacy clause of the Constitution of the United States (Article VI, clause 2) in that it purports to deal with matters (of national security and foreign relations) within the exclusive power of the Federal government, and in the area of subversion, in which Congressional action has superseded State power?

2. Whether Section 103.34(2) of the Ohio Revised Code is repugnant to the Constitution of the United States because the provision for the "disclosing" of persons and groups found by the Ohio Un-American Activities Commission to be "subversive" constitutes the exercise of a non-legislative power of exposure and is an infringement of the constitutional rights of individuals in violation of the due process clause of the Fourteenth Amendment?

3. Whether Section 103.34 of the Ohio Revised Code is repugnant to the due process clause of the Constitution of [fol. 289] the United States because the grant of authority to the Ohio Un-American Activities Commission by the parent legislative body is so broad and ill-defined that a witness, appearing under compulsory process before the Commission, and subject to punishment for the crime of willful refusal to answer its questions, must proceed at his peril without being able reasonably to deduce from the statute the scope of the inquiry?

4. Whether the Ohio immunity act, Section 101.44 of the Ohio Revised Code, is repugnant to the Constitution of the United States because it subjects a witness to prosecution for contempt in the State courts for refusal to make disclosures about matters which could become the basis for prosecution under the Federal laws, thus denying the witness' privilege against self-incrimination guaranteed by the Fifth Amendment, and his right to due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution?

5. Whether appellant was entrapped and thus denied due process of law guaranteed by the Fourteenth Amendment to the United States Constitution by the application to her of the Ohio immunity act when she was not advised that immunity would be granted to her and when, on the con-

trary, she was advised by the Chairman of the Commission that she had the right to refuse to answer questions that might incriminate her pursuant to the Fifth Amendment?

6. Whether appellant was denied due process of law guaranteed by the Fourteenth Amendment to the United States Constitution by her conviction for contempt for refusal to answer questions in the absence of a direction by the Commission that the questions were proper and that answers were required?

7. Whether a witness called before the Ohio Un-American [fol. 290] Activities Commission is privileged by the Fifth Amendment to the United States Constitution to decline to answer questions of such character that affirmative answers thereto could lead to prosecution for the violation of Federal statutes (Smith Act, 18 USC 2385, and McCarran Act, 50 USC 78); and whether her ensuing conviction for contempt by a State court is not barred by the supremacy clause, Article VI, clause 2 of the United States Constitution, and also by the privileges and immunities clause of the Fourteenth Amendment?

8. Whether appellant's conviction for contempt constitutes a denial of the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution because it rests on her refusal to answer questions of the Ohio Un-American Activities Commission in the face of the Ohio immunity act, when that act relates solely to "committees" of the Ohio General Assembly and the said Commission does not fall within the definition of "committees"?

9. Whether appellant's conviction for contempt must be reversed because it was not in accordance with the due process requirements of the Fourteenth Amendment to the United States Constitution in that the parent legislative body, in the broad and ill-defined grant of authority in Section 103.34, did not carry out its responsibility to direct the use of the investigating power and there was a total lack of any indication that the legislature wanted the information the said Commission attempted to elicit from the witness, resulting in the absence of authority by the Commission to compel answers by means of the contempt power?

10. Whether appellant's conviction for contempt constitutes a denial of due process of law guaranteed by the

[fol. 291] Fourteenth Amendment because, during her appearance, the witness was not advised of the pertinency of the questions asked to the subject matter of the Commission's investigation, as charged in the indictment?

11. Whether a witness appearing before the Ohio Un-American Activities Commission can lawfully decline to answer questions concerning her political beliefs, activities, affiliations and the subject matter discussed at meetings she allegedly attended under circumstances in which no State interest is shown to justify any infringement of her rights under the First and Fourteenth Amendments to the United States Constitution?

12. Whether appellant's conviction for contempt for refusal, on the basis of the privilege against self-incrimination, to answer preliminary questions regarding her place and length of residence, place of employment and citizenship status deprives appellant of privileges and immunities and constitutes a denial of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States under the circumstances of this case?

13. Whether due process of law as guaranteed by the Fourteenth Amendment requires that all of the questions in one area which appellant declined to answer be considered a single count of the contempt indictment?

Ann Fagan Ginger, 170 New York Ave., #26, Brooklyn 16, New York, Thelma C. Furry, Second National Building, Akron 8, Ohio, Attorneys for Anna H. Morgan, Appellant.

[fol. 292] Proof of Service (omitted in printing).

[fol. 293] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 294] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1958

No. 62 Misc.

[Title omitted]

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS—October 20, 1958

On consideration of the motion for leave to proceed herein *in forma pauperis*,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Stewart took no part in the consideration or decision of this motion.

[fol. 295] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1958

No. 62 Misc.

[Title omitted]

ORDER POSTPONING JURISDICTION—OCTOBER 20, 1958

Appeal from the Supreme Court of the State of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits and the case is transferred to the appellate docket as No. 463 and set for argument immediately following No. 175.

Mr. Justice Stewart took no part in the consideration or decision of this application.

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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 175

TALMADGE RALEY,
JOSEPH STERN,
EMMETT CALVIN BROWN,

Appellants,

v.

STATE OF OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

MORSE JOHNSON,
921 Dixie Terminal Bldg.,
Cincinnati 2, Ohio,

LOUIS C. CAPELLE,
Keith Bldg.,
Cincinnati 2, Ohio.

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TALMADGE RALEY,
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Appellants,

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STATE OF OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

STATEMENT AS TO JURISDICTION

Appellants, Talmadge Raley, Joseph Stern and Emmett Calvin Brown, submit the following statement in support of their contention that the questions presented herein are substantial and that there is sufficient basis to invoke the jurisdiction of this Court to review this cause on appeal.

(a) Opinions

The opinion of the Supreme Court of Ohio delivered upon the rendering of the judgment sought to be reviewed is

officially reported in 167 Ohio State 295, together with a dissenting opinion. A copy of these opinions is attached in Appendix "A."

The opinion of the Supreme Court of the United States in the previous appeal of this cause is officially reported in 354 U. S. 929.

The opinion of the Supreme Court of Ohio delivered upon the rendering of the judgment which the previous appeal of this cause sought to have reviewed is officially reported in 164 O. S. 529.

The opinion of the Court of Appeals for the First District of Ohio in this cause is officially reported in 100 Ohio Appellate 75.

A copy of the order and judgment appealed from is attached in Appendix "F."

(b) Grounds for Jurisdiction

(i) This is an appeal pursuant to 28 U. S. C. Section 1257 (2) from a final order made and entered by the Supreme Court of Ohio in which that Court on remand from the Supreme Court of the United States, in which the previous appeal had been docketed, "adhered to" its "Former Judgments." These "Former Judgments" of the Ohio Supreme Court affirmed the judgments of conviction of appellants in the Court of Common Pleas of Hamilton County, Ohio, of contempt in violation of Ohio Revised Code Section 2705.02 (formerly Ohio General Code Section 12137) for refusing to answer certain questions propounded to them by the un-American activities commission of Ohio, which judgments of conviction were affirmed in part and reversed in part by the Court of Appeals for the First Judicial District of Ohio.

(ii) The Supreme Court of Ohio entered its judgment and order from which review herein is sought on February 11, 1958. Appellants' Application for Rehearing was denied

on March 5, 1958. Notice of Appeal was filed in the Supreme Court of Ohio on May 29, 1958.

(iii) The statutory provision believed to confer jurisdiction of the appeal on this Court is 28 U. S. C. A. Section 1257 (2):

> "§ 1257. State courts; appeal; certiorari
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(iv) Cases believed to sustain the jurisdiction:

Sweezy v. *New Hampshire*, 354 U. S. 234;
Watkins v. *United States*, 354 U. S. 178;
Barenblatt v. *United States*, 354 U. S. 930—on remand, 252 F. 2d 129;
Sacher v. *United States*, Supreme Ct. No. 828 Oct. Term 1957 decided 5/19/58;
Pennsylvania v. *Nelson*, 350 U. S. 497;
Johnson v. *United States*, 318 U. S. 189;
Ullman v. *United States*, 350 U. S. 422;
Quinn v. *United States*, 349 U. S. 155;
Smith v. *O'Grady*, 312 U. S. 329;
Jack v. *Kansas*, 199 U. S. 372;
United States v. *Rumely*, 345 U. S. 41;
United States v. *Bryan*, 339 U. S. 323;
Counselman v. *Hitchcock*, 142 U. S. 547;
Hoffman v. *United States*, 341 U. S. 479;
Boyd v. *United States*, 116 U. S. 616;
Blau v. *United States*, 340 U. S. 159;

(v) The Ohio Statutes, the validity of which is involved, are Section 101.44 Ohio Revised Code (text set forth in

Appendix "B"), Section 2705.02 Ohio Revised Code (text set forth in Appendix "C"), and Sections 103.31-103.38 Ohio Revised Code, of which Section 103.34 is set forth below and the balance of said sections are set forth in Appendix "D."

"Section 103.34 POWERS AND DUTIES.

The un-American activities commission shall:

(A) Investigate, study, and analyze:

(1) All facts relating to the activities of persons, groups and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(2) All facts concerning persons, groups, and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government, or the industrial potential of this state;

(3) The operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated in this section and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(B) Maintain a liaison with any agency of the federal, state, or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage, or threats of the same.

The commission has such additional rights, duties, and powers as are necessary to enable it fully to exercise those specifically set forth in this section and to accomplish its lawful objectives and purposes."

(c) Questions Presented by This Appeal

1. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that the delegation of authority to the legislative commission was so sweeping, indiscriminate and vague that the constitutionally required preliminary control of the commission by the Legislature was non-existent?

2. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are in violation of the First and Fourteenth Amendments to the Constitution of the United States for the reason that there was no clear determination by the Ohio Legislature that the authorized inquiry into the area of the freedoms protected by these Amendments was justified by a specific legislative need?

3. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that appellants as witnesses before the commission were not able to determine from the statutory delegation of authority to the commission, or from any other indicia of the legislative matters under inquiry, whether the questions propounded to them were pertinent to the matter which the Ohio Legislature intended to have investigated?

4. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to

these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of, the United States for the reason that they authorize and direct a legislative commission to exercise the non-legislative power of exposing individuals for the sake of exposure?

5. Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are unconstitutional because they legislate and authorize legislative investigation in the area of sedition in which area United States Congressional action has preempted and superseded the power of the state?

6. Whether Sections 103.31-103.38, 2705.02 and 101.44 of the Revised Code of Ohio, as interpreted and applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that appellants as witnesses were not directed by said commission to answer questions which formed the counts in the indictments for contempt following appellants' assertion of the privilege against self-incrimination?

7. Whether Sections 103.31-103.38, 2705.02 and 101.44 of the Revised Code of Ohio, as interpreted and applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that although appellants were specifically and repeatedly advised by said commission that they were protected by their constitutional privilege against self-incrimination said Supreme Court of Ohio subsequently held that appellants were in contempt of that commission for asserting their privilege in refusing to answer certain questions because the State Immunity Statute, Ohio Revised Code Section 101.44, removed the need for such privilege?

8. Whether Sections 103.31-103.38, 2705.02 and 101.44 of the Revised Code of Ohio, as interpreted and applied to these appellants, are in violation of the due process clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that the State Immunity Statute, Ohio Revised Code Section 101.44, does not and could not grant immunity from prosecution by the United States or other States, particularly in view of the fact that the un-American activities commission of Ohio was authorized and directed by Section 103.34 (B) to make disclosures about matters which could become the basis for prosecution under Federal and State laws to any agency of the Federal, State or local governments?

(d) Statement of Case

(i) Raley, Brown and Stern, the appellants herein, were individually summoned to appear and to testify under oath before the un-American activities commission of Ohio (hereinafter called Commission) at a session held in Cincinnati, Ohio, on October 20, 1952. In that proceeding each appellant was asked many questions and in many instances each appellant refused to answer such questions asserting the privilege against self-incrimination under the constitutional provisions. The appellants were later separately indicted by the Grand Jury of Hamilton County, Ohio for refusing to testify as to certain specified questions asked them in that proceeding, in violation of Revised Code of Ohio Sec. 2705.02 (formerly Ohio General Code Sec. 12137).

Appellant Raley's indictment contained sixteen counts based on the following questions, to all of which appellant Raley asserted the privilege of the Fifth Amendment to the U. S. Constitution and of Article I, Section 10 of the Ohio Constitution in refusing to answer:

1. "Q. Now, Mr. Raley, as an official of the United Electrical workers, is there any concern among the

officials of the possible presence of Communist Party members among the leadership of the UE?"

2. "Q. Now, as a matter of fact, Victor Decavitch was formerly district president of the UE, was he not?"

3. "Q. Now, as a matter of fact, that was the headquarters of Local 766 of the UE at that time; isn't that correct?"

4. "Q. According to the Daily Worker for June 8, 1949, five United Electrical Workers issued statements —five Electrical leaders, pardon me, issued protests against the jailing of Gus Hall, Henry Winston and John Gates, and it listed those five protestors as Lem Markland, Herbert Hirshberg, Joe Sheetz, John Thomas, and Talmadge Raley. Did you as a UE leader issue a protest against the jailing of these three men?"

5. "Q. Do you know Herbert Hirshberg?"

6. "Q. Do you know Joseph Sheetz?"

7. "Q. Do you know John Thomas?"

8. "Q. As a matter of fact every one of these individuals are leaders of the UE, or were leaders of the UE at that time, were they not, Mr. Raley?"

9. "Q. Let me refer to an article carried in the Cincinnati Post on September 13, 1949, captioned, 'Schools Trace Communist Propaganda. Union Agent Denies Kits Are Leftist,' and refers to an interview with you. Do you recall that interview?"

10. "Q. I wonder if you are familiar with, or happen to know Jerome Joseph?"

11. "Q. Victor Pasche; do you know him?"

12. "Q. Do you happen to know Herbert Siens?"

13. "Q. Do you happen to know Marie Reed Haug?"

14. "Q. Do you happen to know Paul Shepherd?"

15. "Q. Isn't it a fact that the people I have just listed are all prominent in the leadership of the UE in Cleveland, Ohio?"

16. "Q. Who has a similar—holds your position in the Cleveland area at the present time, with the union?"

Appellant Stern's indictment contained two counts based on the following questions, to both of which appellant Stern

asserted the privilege of the Fifth Amendment to the U. S. Constitution and of Article I, Section 10 of the Ohio Constitution in refusing to answer:

1. "Q. Where do you reside, Mr. Stern?"
2. "Q. I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this county?"

Appellant Brown's indictment contained four counts based on the following questions, to all of which appellant Brown asserted the privilege of the Fifth Amendment to the U. S. Constitution, or language indicating such privilege, in refusing to answer:

1. "Q. And what has been your educational background?"
2. "Q. Mr. Brown, were you ever employed by the Fisher Body plant at Norwood, Ohio?"
3. "Q. Is there anything about being employed at that plant which might tend to incriminate you?"
4. "Q. Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the ballot in that election?"

Since the cases, although differing as to the wording of each question, involved the same questions of law, by agreement they were tried together before the Court of Common Pleas, Hamilton County, Ohio. Motions to quash, pleas in abatement and demurrers to the indictments were overruled. A jury trial was waived. The chairman, one member, the counsel, and the reporter of the Commission were called by the state as witnesses. They testified as to the procedure of the Commission and the records of the Cincinnati Hearings before which the appellants had been subpoenaed. The cross-examination attempted to determine the purpose of calling the appellants as witnesses and to show that much of the information sought from appellants was already in

the Commission's files. Objections to questions along these lines were frequently sustained. In addition, the cross-examination of the Chairman of the Commission brought out that it was the policy of the Commission not to press for answers to questions considered incriminating since, as to such questions, the witnesses had the right to refuse answers.

The Trial Court found each appellant guilty of contempt as charged under each count in the indictments. Each appellant was sentenced to ten days in jail under each count, the sentences to run concurrently, and each was fined $500.00 and costs under each count, the fines as to all but the first count in each indictment being remitted. A motion for a new trial was overruled.

On appeal, where the cases were consolidated, the Court of Appeals for the First Judicial District of Ohio, after oral arguments and briefs, affirmed the convictions on all counts involving questions asked by a Commission member and reversed on all counts involving questions asked only by the counsel of the Commission.

On appeal, the Supreme Court of Ohio, after oral argument and briefs, affirmed the judgments of conviction and denied the application for rehearing.

An appeal was duly docketed in the Supreme Court of the United States on August 10, 1956. On June 27, 1957 that Court vacated the judgments of the Supreme Court of Ohio and remanded the case for reconsideration in the light of *Sweezy* v. *New Hampshire*, 354 U. S. 234 and *Watkins* v. *United States*, 354 U. S. 178.

On reconsideration, after oral argument and briefs, the Supreme Court of Ohio adhered to its former judgments. The decision was a brief Per Curiam opinion (Appendix "A") in which four of the judges joined, one dissented, and the remaining two who sat did not indicate either a concurrence or dissent. The application for rehearing was denied.

(ii) State in the proceedings and manner in which federal questions were raised.

Questions 1, 2, 3, and 4 (supra pp. 5-6) all come within the holdings and doctrines of *Watkins* v. *United States,* 354 U. S. 178, and *Sweezy* v. *New Hampshire,* 354 U. S. 234. On the remand of this case the Supreme Court of Ohio was ordered by the Supreme Court of the United States to reconsider it in the light of those two cases. These questions were raised and argued both in the briefs and in oral arguments and in the Application for Rehearing (Supplemental Transcript of Record) by the appellants before the Supreme Court of Ohio on such remand. The Supreme Court of Ohio sustained the validity of the statutes involved. In addition these questions were raised in the motion to quash the indictments (Record—Questions of Law) and in all subsequent oral arguments and briefs in the Court of Appeals and Supreme Court of Ohio. These questions were not specifically ruled on by any court until the decision of the Supreme Court of Ohio on the remand.

As to question 5 (supra p. 6), the statute which created the Commission and under which it was organized to act shows on its face that a primary purpose and power of the Commission was to investigate subversive and seditious activities of both persons and groups. The Record of the hearings of the Commission which resulted in the indictments for contempt of appellants herein is attached to the Record and identified as ". . . Report on . . . Cincinnati, Ohio Hearings October 20, 1952" (Exhibit 6), and the "Report of the un-American Activities Commission State of Ohio 1951-1952" is attached to the Record (Exhibit 7). Both demonstrate that the Commission primarily concerned itself with investigating alleged sedition and suspected Communist seditious activities and subversive organizations. In particular, the Cincinnati Hearings (Exhibit 6) show throughout that each appellant herein was interro-

gated as to his possible Communist and subversive activities in Ohio and other states and as to his presumed association with others who were allegedly Communists, or had been convicted or indicted under the Smith Act, or had been accused of plotting the overthrow of the federal government by force.

Appellants questioned the constitutional power of the State of Ohio to investigate and legislate in such area in their brief, reply brief, and oral argument in the Court of Appeals. That Court specifically rejected the assertion that the federal government had by Congressional action superseded the power of the State to act in this area (100 Ohio App. 81-85). Appellants again raised this federal question in the Supreme Court of Ohio as Assignment of Error No. 7 (Transcript of Record, p. 14) and in their brief and oral argument. That Court did not reach this question in its decision. Appellants again raised the question in the Application for Rehearing (Transcript of Record, p. 77) which was denied.

As to question 6 (supra p. 6), the ". . . Report on . . . Cincinnati, Ohio Hearings October 20, 1952" (Exhibit 6) shows throughout that in all but one (Exhibit 6, p. 149), and possibly two (Exhibit 6, p. 99) the appellants were not directed to answer the questions which formed the counts in their indictments, nor were they given any indication that the Commission overruled their assertions of the privilege and considered such assertions contumacious. The Court of Appeals held such direction unnecessary if a member of the Commission asked the question (100 Ohio App. 86-97) and the Supreme Court of Ohio held that the applicability of the state immunity statute deprived appellants of the privilege. This question was again raised on the Application for Rehearing (Transcript of Record, p. 73) which was denied.

As to question 7 (supra p. 6), the trial court and the Court of Appeals did not base their decisions on the applica-

bility of the state immunity statute, although the Court of Appeals rejected appellants' assertion, on brief and oral argument, that it was inapplicable in view of the Commission's assurance to the appellants that the privilege was available (100 Ohio App. 99). The Record (Bill of Exceptions, pp. 28-29) and the decisions of both the Court of Appeals and the Supreme Court, and particularly the dissenting opinion of Judge Stewart (164 O. S. 561), show that the Commission misled the appellants by assuring them of their constitutional right to refuse answers to incriminating questions regardless of the state immunity statute which, in fact, was never referred to. The invalidity of the ruling that the state immunity statute abrogated the privilege against self-incrimination regardless of the assurances given the appellants at the hearing under the Fourteenth Amendment was again raised on the Application for Rehearing (Transcript of Record, pp. 73-75) which was denied.

As to question 8 (supra p. 7), it is clear that the state immunity statute does not and could not grant immunity from prosecution by the federal government and other states. It is also clear that the Commission by its legislative mandate was authorized and directed to investigate subversive activities unlawful under federal and other state laws and to transmit incriminating information received to the federal and other state governments. The Court of Appeals (100 Ohio App. 86) sustained the validity of this statute as did the Supreme Court of Ohio (164 O. S. 539-542) although one judge dissented, asserting the appellants had been denied their rights under the Fifth Amendment to the Constitution (164 O. S. 556).

(e) The Federal Questions Are Substantial

As to question 1 (supra p. 5), the scope of the Commission's authorized inquiry is set out in Ohio R. C. Sec. 103.34 (supra p. 4). Are the safeguards for legislative investi-

gations constitutionally required under *Sweezy*, supra, and *Watkins*, supra, met under such a sweeping, indiscriminate and vague mandate? Is there any preliminary control of the Commission by the parent legislature in this case when the Commission is authorized to:

> ". . . Investigate . . . .
> (2) All facts concerning persons, groups and organizations . . . whose activities might adversely affect the functions of any agency of the state or national government or the industrial potential of this state. . . ."

Can this Court, or any Court, or the Commission itself, state authoritatively and with clarity under such an expansive dominion that the Ohio Legislature had asked the Commission "to gather the kind of facts comprised in the subjects upon which petitioner was interrogated" (*Sweezy*, supra p. 253)?

As to question 2 (supra p. 5), there is nothing in the Record to indicate in any way that the Ohio Legislature made a clear determination that a specific legislative need justified placing the freedoms protected by the First and Fourteenth Amendments in jeopardy. Can witnesses before this Commission be required under penalty of contempt to answer questions concerning their opinions, beliefs and political activities without violating their precious constitutional liberties? Under the holdings of *Watkins*, supra, and *Sweezy*, supra, can appellant Raley be sent to jail for refusing to answer:

> "Q. According to the Daily Worker for June 8, 1949, five United Electrical Workers issued statements—five Electrical leaders, pardon me, issued protests against the jailing of Gus Hall, Henry Winston and John Gates, and it listed those five protestors as Lem Markland, Herbert Hirshberg, Joe Sheetz, John Thomas, and Talmadge Raley. Did you as a UE leader issue a protest

against the jailing of these three men?" (Count 4, supra p. 8.)

"Q. Let me refer to an article carried in the Cincinnati Post on September 13, 1949, captioned, 'Schools Trace Communist Propaganda. Union Agents Denies Kits are Leftist,' and refers to an interview with you. Do you recall that interview?" (Count 9, supra p. 8.)

Can appellant Stern be sent to jail for refusing to answer:

"Q. I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this county?" (Count 2, supra p. 9.)

Can appellant Brown be sent to jail for refusing to answer:

"Q. Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the ballot in that election?" (Count 4, supra p. 9.)

As to question 3 (supra p. 5), certainly under the wide mandate given the Commission (R. C. 103.34 supra p. 4) these appellants as witnesses before it could not determine what subject was under investigation, why they were called as witnesses, and whether or not the questions asked them were pertinent. The chairman simply called the session to order, called the witnesses, and proceeded with the questions without any statement or clarification as to purpose or subject matter. Nor did any other members of the Commission or its counsel define any area of inquiry. All that these appellants had available to determine whether the questions asked were either authorized or pertinent was the broad language of the mandate. Is due process violated when witnesses are compelled to make a determination of pertinence with so little guidance? These appellants frequently inquired as to the purpose of the questioning (Raley—Exhibit 6, p. 71 and p. 92; Stern—Exhibit 6, p.

171) and received no guidance in the replies thereto. In fact, when appellant Brown, unrepresented by counsel, asserted that he did not think the question was any business of the Commission, the chairman replied:

> "We will determine that Mr. Brown." (Exhibit 6, p. 193.)

Under such circumstances, can the knowledge of the subject to which the interrogation is deemed pertinent be deemed to have been available to these witnesses with the degree of explicitness and undisputable clarity as required under *Watkins,* supra, and *Sweezy,* supra?

As to question 4 (supra pp. 5-6), in *Watkins* v. *United States,* 354 U. S. 178 this Court stated:

> ". . . nor is the Congress a law enforcement or trial agency" (at p. 187).
>
> "We have no doubt that there is no Congressional power to expose for the sake of exposure" (at p. 200).

The mandate (Ohio R. C. Sec. 103.34 (B)) specifically directs the Commission to maintain liaison with other federal, state and local governments "in devising and promoting means of disclosing those persons who seek to alter or destroy" the state or United States Government by force, violence, etc. Can witnesses receive due process when subpoenaed to testify before a legislative commission authorized and directed to engage in the very function which this Court has proscribed? More particularly, have these appellants as witnesses before such Commission received due process when subjected to the trial of an almost uninterrupted barrage of the "Is it not a fact" cross-examination (Raley—Exhibit 6, pp. 79-108; Stern—Exhibit 6, pp. 156-171; Brown—Exhibit 6, pp. 194-200)? Do legislative investigating bodies violate due process when they reveal an attempt to decoy a witness into a possible perjury indictment

as shown by the Chairman's response to appellant Brown's inquiry as to the proof of the factual assertion contained in an "Is it not a fact" question:

> "The proof will be forthcoming. The moment you deny under oath that you were present at that Communist Party convention as a delegate from Cincinnati" (Exhibit 6, p. 200).

Are the requirements for legislative investigations defined in *Sweezy* v. *United States*, 354 U. S. 234, violated when the questioning of witnesses demonstrates (Exhibit 6) that "the investigators had thoroughly prepared for the interview and were not acquiring new information as much as corroborating data already in their possession" (*id.* at p. 248)?

As to question 5 (supra p. 6), this Court held in *Pennsylvania* v. *Nelson*, 350 U. S. 497, that Congress had occupied the field of sedition and subversive activities to the exclusion of parallel state legislation, that the dominant interest of the federal government precluded state intervention and that administration of state acts would conflict with the operation of the federal plan. Appellants have been convicted of contempt of a state legislative commission the title of which—un-American activities commission of Ohio—and the legislative mandate under which it acted (supra p. 4) clearly show that the state was legislating, intervening and administering in the field of sedition and subversive activities. Can a state be without constitutional power to enact criminal sedition laws and still constitutionally compel testimony from its citizens under penalty of contempt as to acts of subversion and sedition? Can citizens be constitutionally fined and sentenced for refusing to give testimony before a state commission empowered to investigate and recommend legislation in furtherance of powers which the state cannot constitutionally exercise?

As to question 6 (supra p. 6), to all but one, possibly two, questions which formed the counts of the indictments herein, appellants' assertion of their privilege was as far as appellants knew accepted by the Commission. No direction to answer was given to appellants. The Commission in no way apprised the appellants that it rejected their invocations of the privilege. Is it due process of law under the Fourteenth Amendment to punish a witness for not testifying under oath when the authority before which he is testifying requires him to guess whether it considered his assertion of the privilege contumacious? Under *Quinn* v. *United States*, 349 U. S. 155, and other cases, is not a clear disposition of the witness's objection a prerequisite to a prosecution for contempt under the due process clause of the Fourteenth Amendment? Is not the breach of a "long standing tradition" in the United States and other English-speaking countries that witnesses must be apprised of the rejection of their constitutional objection to a question in violation of the Fourteenth Amendment?

As to question 7 (supra p. 6), the courts below recognized that appellants were clearly, unequivocally and frequently advised by the Commission that they could refuse to answer questions which might tend to incriminate them. The Commission, although not specifically referring to the statute, in effect ruled that appellants were not protected by the state immunity law. The Supreme Court stated (164 Ohio State 548) that the Chairman had "misstated the law" to the appellants. That Court held, nevertheless, that the appellants were protected by the immunity statute, were not entitled to the privilege, and were, therefore, guilty of contempt. Is it due process of law to impose a jail sentence and fine on appellants for merely asserting what they believed to be a basic constitutional right after they were instructed by the presiding officer at the hearing that they had such right? Under *Smith* v. *O'Grady*, 312 U. S. 329, is it due

process for a legislative agency of the state to mislead appellants as to their constitutional rights which the Supreme Court of the state later holds they did not have and by reason thereof are guilty of contempt? Have the constitutional rights of these appellants been violated when they have been found guilty of contempt despite the findings and reasoning of Judge Stewart in his dissenting opinion at 164 O. S. 561:

> "It seems to me that, since the defendants were apprised by the commission at the time they were testifying that they had a right to refuse to answer questions which might incriminate them, they could not possibly in following the admonition of the commission be in contempt of it except possibly as to the questions which the defendants were directed to answer."

As to question 8 (supra p. 7), the state immunity statute (Appendix "B") does not and cannot grant immunity from prosecution by the federal government and other states. The Commission was authorized and directed to investigate matters involving violation of federal and other state laws and to maintain a liaison with federal and other state agencies concerning unlawful subversive acts. Appellants in testifying before the Commission knew, therefore, that any incriminating testimony would be transmitted to the federal government and other states for use in prosecution. Judge Hart in his dissenting opinion (164 O. S. 556) asked:

> "How then, notwithstanding some apparent obiter in decisions of the federal Supreme Court, can a state immunity statute, which compels a witness to answer questions which incriminate him and which admittedly in turn may be used to incriminate him in a federal prosecution where the state immunity statute even against prosecution is wholly inoperative to protect

him, be valid in view of the constitutional rights of the witness under the Fifth Amendment to the federal Constitution among which is the over-all right to avoid compulsory self-incrimination?"

If the constitutionality of the Immunity Act of 1954, 68 Stat. 745, 18 U. S. C. (Supp. II) Sec. 3846 is sustained in *Ullman* v. *United States*, 350 U. S. 422, on the ground that it protected a witness from prosecution as to matters testified to in any court, state or federal, how can a state immunity statute which does not protect the witness either from prosecution (or use of his testimony in the prosecution) in the federal or other state courts be deemed an adequate constitutional substitute for the constitutional right of protection against self-incrimination?

The statutes of Ohio in question as interpreted and applied by the Supreme Court of Ohio, therefore, present to this Court substantial federal questions under the United States Constitution.

Respectfully submitted,

MORSE JOHNSON,
921 Dixie Terminal Bldg.,
Cincinnati 2, Ohio,

LOUIS C. CAPELLE,
Keith Bldg.,
Cincinnati 2, Ohio.

July, 1958

Appendix A

OPINION BELOW

The opinion of the Supreme Court of Ohio is officially reported in 167 Ohio State 295. A copy of this opinion is attached.

APPENDIX A

In The

SUPREME COURT OF OHIO

Nos. 34311, 34361

THE STATE OF OHIO,

Appellee,

v.

MORGAN,

Appellant.

THE STATE OF OHIO,

Appellee,

v.

RALEY, et al.,

Appellants.

SYLLABUS BY THE COURT

On remand from the Supreme Court of the United States (February 11, 1958).

Per Curiam. In compliance with the mandates of the Supreme Court of the United States, this court has considered the causes in the light of *Sweezy* and *Watkins*

cases and do not find enough similarity to warrant a change in our former judgments. The former judgments of this court as reported in 164 Ohio St., 529, are adhered to.

Former judgments adhered to.

WEYGANDT, C. J., ZIMMERMAN, MATTHIAS and BELL, JJ., concur.

TAFT, J., dissenting. I have no sympathy for the attitude and conduct of these defendants. However, for the reasons briefly stated in my dissenting opinion at the time of the previous hearing of these cases, it is my firm belief that this court cannot affirm the judgment of the Court of Appeals in either case without adding provisions to our statutes which were never enacted by the General Assembly. Under the Ohio Constitution, this court has no such legislative authority.

APPENDIX B

PAGE'S OHIO REVISED CODE, TITLE 1, p. 8

Section 101.44 TESTIMONY BEFORE COMMITTEE NOT TO BE USED IN CRIMINAL PROSECUTION OF WITNESS; EXCEPTION.

Except a person who, in writing, requests permission to appear before a committee or subcommittee of the general assembly, or of either house thereof, or who, in writing, waives the rights, privileges, and immunities granted by this section, the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against such witness, nor shall a person be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter, or thing, concerning which he testifies, or produces evidence. This section does not exempt a witness from the penalties for perjury.

APPENDIX C

PAGE'S OHIO REVISED CODE, TITLE 27, p. 57

Section 2705.02 ACTS IN CONTEMPT OF COURT.

A person guilty of any of the following acts may be punished as for a contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer;

(B) Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions;

(C) A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required;

(D) The rescuse, or attempted rescue, of a person or of property in the custody of an officer by virtue of an order or process of court held by him;

(E) A failure upon the part of a person recognized to appear as a witness in a court to appear in compliance with the terms of his recognizance.

APPENDIX D

PAGE'S OHIO REVISED CODE, TITLE 1, pp. 19-20

UN-AMERICAN ACTIVITIES COMMISSION

Section 103.31 UN-AMERICAN ACTIVITIES COMMISSION.

There is hereby created an un-American activities commission in the legislative branch of the government, consisting of six members of the senate and six members of the house of representatives, respectively. The president pro tempore of the senate and the speaker of the house of representatives shall be members and shall appoint as

members of the commission five additional members in each house, not more than three of whom shall be members of the same political party. When a vacancy of the membership of the commission occurs it shall be filled in the same manner as the original appointments.

Section 103.32 ORGANIZATION.

The un-American activities commission shall organize by selecting from its membership a chairman, a vice-chairman, and a secretary. The members of the commission shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their official duties.

Section 103.33 LEGAL DIRECTOR AND ASSISTANTS.

The un-American activities commission shall employ and fix the compensation of a legal director who shall employ, with the approval of the commission, such assistants, stenographers, and clerks, and engage the services of such professional investigators or technical advisors as the commission deems necessary to carry out the objects and purposes of section 103.34 of the Revised Code.

The salaries and all expenses incurred by the commission shall be paid from the state treasury upon the warrant of the auditor of state by voucher approved by its chairman.

Section 103.34 Supra p. 4.

Section 103.35 POWERS OF CHAIRMAN AS TO WITNESSES.

In the discharge of any duties imposed by sections 103.31 to 103.38, inclusive, of the Revised Code, the chairman of the un-American activities commission may, throughout the state, administer oaths, issue subpoenas compelling the attendance of witnesses and the production

of any papers, books, accounts, records, documents, and testimony, and cause the deposition of witnesses either residing within or without the state. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the commission or on the refusal of any person or officer to testify to any matters regarding which he may be lawfully interrogated, or to conform to section 2705.02 of the Revised Code, the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for contempt to be filed and prosecuted in the court of common pleas of any country under sections 2705.03 to 2705.09, inclusive, of the Revised Code. Each witness appearing before the commission by its order, other than a state official or employee, shall receive such compensation as the commission directs and mileage in the amounts provided by section 2335.08 of the Revised Code. Fees shall be authorized and paid after a notation has been made on the proper voucher sworn to by such witness and approved by the chairman of the commission.

Section 103.36 STUDIES MAY BE REQUIRED TO BE SUBMITTED.

Each officer, board, commission, or department of the state government or of any local government shall make such studies as the un-American activities commission requires within the limitations of its budget and shall furnish the commission all such assistance, information, records, and documents as it requires for the accomplishment of its duties. Reports and recommendations resulting from such studies shall be presented to the commission at least within sixty days prior to the regular session of the 100th General Assembly.

Appendix D

The commission may require the services of the bureau of code revision, judicial council, legislative reference bureau, legislative research commission, the Ohio program commission, and such other departments and agencies as it deems necessary to prepare a program of legislation as provided by section 103.34 of the Revised Code.

Section 103.37 MEETINGS; SUBCOMMITTEES.

The un-American activities commission shall meet as often as is necessary to perform its duties, provided that in any event it shall meet at least once each quarter. Five members constitute a quorum, and the majority thereof have authority to act on matters within the jurisdiction of the commission. The commission shall formulate such rules of procedure and policies to be followed in the performance of its duties and functions as it deems necessary and appropriate. The chairman may appoint subcommittees, consisting of not less than three members of the commission, which shall have all the powers conferred upon the commission itself by sections 103.31 to 103.38, inclusive, of the Revised Code, and such specific duties as are assigned to them. A majority of each subcommittee constitutes a quorum. The chairman of any subcommittee has all of the powers conferred upon the chairman of the commission by sections 103.31 to 103.38, inclusive, of the Revised Code.

Section 103.38 REPORTS.

The un-American activities commission shall keep minutes of each meeting or hearing and a record of all testimony and evidence submitted to it. It may make such reports, findings, and recommendations, based upon its investigations and studies, as it deems advisable and necessary, to the people, the members of the One Hundredth General Assembly, individually, or in any special session

thereof, and to the governor. It shall complete its work by and render a final report of its activities and of its recommendations to the One Hundredth General Assembly, the governor, and the attorney general on January 31, 1954, at which time all of its records, books, documents, and other property shall be committed to the attorney general. Any member of the general assembly, the governor, or the attorney general shall have the right to attend any session of the commission, and may present his views on matters which the commission may be considering.

APPENDIX E

Judgment and Order Appealed From
THE SUPREME COURT OF OHIO

Case No. 34361

THE STATE OF OHIO,

Plaintiff-Appellee,

v.

TALMADGE RALEY, JOSEPH STERN and EMMETT CALVIN BROWN,

Defendants-Appellants.

JOURNAL ENTRIES

JOURNAL 42, pages 503-504

APPEAL FROM THE COURT OF APPEALS OF HAMILTON COUNTY

This day this cause came on for consideration on the Mandate of the Supreme Court of the United States received

and filed herein July 24, 1957, remanding the cause to this Court for further consideration, said Mandate being in the words and figures following, to wit:

UNITED STATES OF AMERICA, SS;

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

To the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

WHEREAS, Lately in the Supreme Court of the State of Ohio, before you, or some of you, in a cause between State of Ohio, plaintiff-appellee, and Talmadge Raley, Joseph Stern, and Emmett Calvin Brown, defendants-appellants, No. 34361, wherein the judgment of said Supreme Court duly entered on the 23rd day of February A. D. 1956 is in the following words, viz:

"This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Hamilton County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellants its costs herein expended taxed at $———.

Ordered, that a special mandate be sent to the Court of Common Pleas of Hamilton County, to carry this Judgment into Execution.

Ordered, that a copy of this entry be certified to the Clerk of the Court of Appeals, of Hamilton County, "for entry."

as by the inspection of the transcript of the record of the said Supreme Court which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-six, the said cause came on to be heard before the SUPREME COURT OF THE UNITED STATES on the said transcript of record and was duly submitted.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby vacated with costs.

It is further ordered that Talmadge Raley, et al. recover from the State of Ohio One Hundred Dollars ($100) for their costs herein expended.

It is further ordered that this cause be, and the same is hereby, remanded to the Supreme Court of Ohio for consideration in the light of *Sweezy* v. *New Hampshire* by Wyman, Attorney General, No. 175, October Term, 1956, decided June 17, 1957, and *Watkins* v. *United States*, No. 261, October Term 1956, decided June 17, 1957.

JUNE 24, 1957

And the same is hereby remanded to you, the said judges of the said Supreme Court of the State of Ohio, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said appeal notwithstanding.

Appendix E

Witness the Honorable EARL WARREN, Chief Justice of the United States, the twenty-second day of July, in the year of our Lord one thousand nine hundred and fifty-seven. Costs of Talmadge Raley et al.

Clerk $100.00

JOHN T. FEY,
Clerk of the Supreme Court of the United States.
By: /s/ R. J. BLANCHARD,
R. J. BLANCHARD,
Deputy.

FILED
JULY 24, 1957
SUPREME COURT OF OHIO
ELLIOT E. WELCH, CLERK

In compliance with the Mandate of the Supreme Court of the United States this cause came on to be considered in the light of the decision of the Supreme Court of the United States in the case of *Sweezy* v. *New Hampshire*, 354 U. S., 234, and the cause of *Watkins* v. *United States*, 354 U. S. 178, and was argued by counsel. On consideration whereof, it is ordered and adjudged that this court does not find enough similarity with the *Sweezy* and *Watkins* cases to warrant a change in its former judgment.

It is further ordered that the judgment of this court as reported in 164 O. S. 529, be and the same hereby is, adhered to.

Ordered, That a special mandate be sent to the Court of Common Pleas of Hamilton County to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Court of Appeals of Hamilton County, "for entry."

LIBRARY
SUPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
FEB 27 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 175

TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN,

Appellants,

v.

STATE OF OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF FOR APPELLANTS

Morse Johnson,
921 Dixie Terminal Bldg.,
Cincinnati 2, Ohio,
Attorney for Appellants.

Jack G. Day,
Ohio Civil Liberties Union,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 175

TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN,

Appellants,

v.

STATE OF OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF FOR APPELLANTS

Opinions Below

The opinion of the Supreme Court of Ohio delivered upon the rendering of the judgment sought to be reviewed is officially reported in 167 Ohio State 295, together with a dissenting opinion (R. 251).

The opinion of the Supreme Court of Ohio delivered upon the rendering of the judgment which the previous appeal of this cause sought to have reviewed is officially reported in 164 O. S. 529, together with three dissenting opinions (R. 201-241).

The opinion of the Court of Appeals for the First District of Ohio in this cause is officially reported in 100 Ohio Appellate 75 (R. 173-196).

Jurisdiction

The judgment and order of the Supreme Court of Ohio from which this appeal was taken was entered on February 11, 1958. Appellants' Application for Rehearing was denied on March 5, 1958. Notice of Appeal was filed in the Supreme Court of Ohio on May 29, 1958. Appellants' Statement as to Jurisdiction was filed in this Court on July 16, 1958. This Court postponed jurisdiction October 20, 1958.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (2).

Constitutional Provisions and Statutes Involved

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fifth Amendment to the United States Constitution provides in part:

> "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

The Fourteenth Amendment to the United States Constitution provides in part:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I Section 10 to the Constitution of Ohio provides in part:

". . . No person shall be compelled, in any criminal case to be a witness against himself; . . ."

Ohio Revised Code Section 103.31-103.38 provides:

"Section 103.31 UN-AMERICAN ACTIVITIES COMMISSION.

There is hereby created an un-American activities commission in the legislative branch of the government, consisting of six members of the senate and six members of the house of representatives, respectively. The president pro tempore of the senate and the speaker of the house of representatives shall be members and shall appoint as members of the commission five additional members in each house, not more than three of whom shall be members of the same political party. When a vacancy of the membership of the commission occurs it shall be filled in the same manner as the original appointments.

Section 103.32 ORGANIZATION.

The un-American activities commission shall organize by selecting from its membership a chairman, a vice-

chairman, and a secretary. The members of the commission shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their official duties.

Section 103.33 LEGAL DIRECTOR AND ASSISTANTS.

The un-American activities commission shall employ and fix the compensation of a legal director who shall employ, with the approval of the commission, such assistants, stenographers, and clerks, and engage the services of such professional investigators or technical advisors as the commission deems necessary to carry out the objects and purposes of section 103.34 of the Revised Code.

The salaries and all expenses incurred by the commission shall be paid from the state treasury upon the warrant of the auditor of state by voucher approved by its chairman.

Section 103.34 . POWERS AND DUTIES.

The un-American activities commission shall:

(A) Investigate, study, and analyze:

(1) All facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(2) All facts concerning persons, groups, and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government, or the industrial potential of this state;

(3) The operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated in this section and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(B) Maintain a liaison with any agency of the federal, state, or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage, or threats of the same.

The commission has such additional rights, duties, and powers as are necessary to enable it fully to exercise those specifically set forth in this section and to accomplish its lawful objectives and purposes.

Section 103.35 POWERS OF CHAIRMAN AS TO WITNESSES.

In the discharge of any duties imposed by sections 103.31 to 103.38, inclusive, of the Revised Code, the chairman of the un-American activities commission may, throughout the state, administer oaths, issue subpoenas compelling the attendance of witnesses and the production of any papers, books, accounts, records, documents, and testimony, and cause the deposition of witnesses either residing within or without the state. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the commission or on the refusal of any person or officer to testify to any matters regarding which he may be lawfully interrogated, or to conform to section 2705.02 of the Revised Code, the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for

contempt to be filed and prosecuted in the court of common pleas of any county under sections 2705.03 to 2705.09, inclusive, of the Revised Code. Each witness appearing before the commission by its order, other than a state official or employee, shall receive such compensation as the commission directs and mileage in the amounts provided by section 2335.08 of the Revised Code. Fees shall be authorized and paid after a notation has been made on the proper voucher sworn to by such witness and approved by the chairman of the commission.

Section 103.36 STUDIES MAY BE REQUIRED TO BE SUBMITTED.

Each officer, board, commission, or department of the state government or of any local government shall make such studies as the un-American activities commission requires within the limitations of its budget and shall furnish the commission all such assistance, information, records, and documents as it requires for the accomplishment of its duties. Reports and recommendations resulting from such studies shall be presented to the commission at least within sixty days prior to the regular session of the 100th General Assembly.

The commission may require the services of the bureau of code revision, judicial council, legislative reference bureau, legislative research commission, the Ohio program commission, and such other departments and agencies as it deems necessary to prepare a program of legislation as provided by section 103.34 of the Revised Code.

Section 103.37 MEETINGS; SUBCOMMITTEES.

The un-American activities commission shall meet as often as is necessary to perform its duties, provided that in any event it shall meet at least once each quarter. Five

members constitute a quorum, and the majority thereof have authority to act on matters within the jurisdiction of the commission. The commission shall formulate such rules of procedure and policies to be followed in the performance of its duties and functions as it deems necessary and appropriate. The chairman may appoint subcommittees, consisting of not less than three members of the commission, which shall have all the powers conferred upon the commission itself by sections 103.31 to 103.38, inclusive, of the Revised Code, and such specific duties as are assigned to them. A majority of each subcommittee constitutes a quorum. The chairman of any subcommittee has all of the powers conferred upon the chairman of the commission by sections 103.31 to 103.38, inclusive, of the Revised Code.

Section 103.38 REPORTS.

The un-American activities commission shall keep minutes of each meeting or hearing and a record of all testimony and evidence submitted to it. It may make such reports, findings, and recommendations, based upon its investigations and studies, as it deems advisable and necessary, to the people, the members of the One Hundredth General Assembly, individually, or in any special session thereof, and to the governor. It shall complete its work by and render a final report of its activities and of its recommendations to the One Hundredth General Assembly, the governor, and the attorney general on January 31, 1954, at which time all of its records, books, documents, and other property shall be committed to the attorney general. Any member of the general assembly, the governor or the attorney general shall have the right to attend any session of the commission, and may present his views on matters which the commission may be considering."

Ohio Revised Code Section 101.44 provides:

"Except a person who, in writing, requests permission to appear before a committee or subcommittee of the general assembly, or of either house thereof, or who, in writing, waives the rights, privileges, and immunities granted by this section, the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against such witness, nor shall a person be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter, or thing, concerning which he testifies, or produces evidence. This section does not exempt a witness from the penalties for perjury."

Ohio Revised Code Section 2705.02 provides in part:

"ACTS IN CONTEMPT OF COURT.

A person guilty of any of the following acts may be punished as for a contempt:

• • •

(C) A failure to obey a subpoena duly served, or a refusal to be sworn or to answer as a witness, when lawfully required; . . ."

• • •

Questions Presented

Whether Sections 103.31-103.38 of the Revised Code of Ohio establishing and defining the powers and duties of the Ohio un-American activities commission, as applied to these appellants, are in violation of the Due Process Clause of Section I of the Fourteenth Amendment to the Constitution of the United States for the reason that:

(1) The delegation of authority to the legislative commission was so sweeping, indiscriminate and vague that the constitutionally required preliminary control of the commission by the Legislature was non-existent;

(2) There was no clear determination by the Ohio Legislature that the authorized inquiry into the area of the freedoms protected by this Amendment was justified by a specific legislative need;

(3) Appellants as witnesses before the commission were not able to determine from the statutory delegation of authority of the commission, or from any other indicia of the legislative matters under inquiry, whether the questions propounded to them were pertinent to the matter which the Ohio Legislature intended to have investigated;

(4) Appellants as witnesses were not directed by said commission to answer questions which formed the counts in the indictments for contempt following appellants' assertion of the privilege against self-incrimination;

(5) They authorize and direct a legislative commission to exercise the non-legislative power of exposing individuals for the sake of exposure;

(6) They legislate and authorize legislative investigation in the area of sedition in which area United States Congressional action has preempted and superseded the power of the state;

(7) Although appellants were specifically and repeatedly advised by said commission that they were protected by their constitutional privilege against self-incrimination the Supreme Court of Ohio subsequently held that appellants were in contempt of that commission for asserting their privilege in refusing to answer certain questions because the State Immunity Statute, Ohio Revised Code Section 101.44 removed the need for such privilege;

(8) The State Immunity Statute, Ohio Revised Code Section 101.44, does not and could not grant immunity from prosecution by the United States or other states, particularly in view of the fact that the un-American activities commission of Ohio was authorized and directed by Section 103.34 (B) to make disclosures about matters which

could become the basis for prosecution under Federal and State laws to any agency of the Federal, State or local governments.

Statement of Case

Appellants have been sentenced to fines and imprisonment under indictments charging violations of Ohio General Code Section 12137 (now Ohio Revised Code Section 2705.02) for refusing to testify as to certain specified questions before the Ohio un-American activities commission.

1. Hearings

Raley, Brown and Stern, the appellants herein, were individually summoned to appear and to testify under oath before the un-American activities commission of Ohio (hereinafter called Commission) at a session held in Cincinnati, Ohio, on October 20, 1952. The statute creating the Commission (Ohio Revised Code Sections 103.31-103.38) gave it sweeping powers to investigate "All facts" concerning vaguely defined subversive and seditious activities of persons, groups and organizations. The Commission's vast authority included power to investigate:

> "All facts concerning persons, groups and organizations . . . whose activities might adversely affect . . . the functioning of any agency of the state or national government or the industrial potential of this state . . ."

In addition, the Commission was directed to:

> "Maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage, or threats of the same."

There is nothing in the Record to indicate that the Ohio Legislature in any way defined or limited this indiscriminate mandate or that it made a clear determination that a specific legislative need justified placing constitutional liberties in jeopardy.

The chairman opened the session with a statement which among other things accused the witnesses, including appellants, of practicing "fraud and deception" (R. 76). In no way did the chairman in this statement clarify the purpose of the session nor the matter under inquiry, except possibly by suggesting that the witnesses, including appellants, feared "exposure of un-American activities conducted in secret . . ." (R. 76). Even when the appellants inquired as to the purpose or pertinence or challenged the right to inquire, the Commission offered no guidance. Thus, on two occasions the Commission conceded that the information sought was already of record but that it was "within the scope of our investigation" (R. 78, 80-81). On another occasion the question was simply repeated (R. 108). At one point after appellant Raley complained that the Commission was not within its bounds in prying into his thoughts, the Commission replied:

> ". . . We simply want to know whether your intentions as a responsible labor leader in Cincinnati constitutes a menace to the war effort in this area . . ." (R. 116).

When appellant Stern challenged the right of the Commisson to pry into his opinions and thoughts, the Commission finally asserted that it depended on the "nature" of his opinions (R. 146-147). And when appellant Brown said he did not think the question was properly the business of the Commission, the reply was:

> "We will determine that, Mr. Brown" (R. 150-151).

The questioning of appellants, which for the most part was insulting, hostile and incriminating, ranged over a wide area of their lives, associations and opinions (R. 77-165), and a great majority of the questions were of the "Is it not a fact" cross-examination variety (R. 86-103; 136-148; 151-163). Accusations of criminal activities were implied in questions (R. 143, 153), "Have you stopped beating your wife?" questions were used (R. 135-136), and on one occasion an intent to decoy the witness into a perjury indictment was demonstrated (R. 155).

The Record shows that only a very few of the questions asked the appellants sought answers to which the Commission did not assume it had the answer. The nature of the hearings is fully revealed by noting the kind of questions which were asked to which the answers were not assumed. (Colloquies as to the meaning of phrases, the use of prepared statements, etc. are not included in this analysis.) As to appellant Raley, he was asked about the purposes of the Soviet Union (R. 107), the affect on the Bill of Rights if the Communist Party won (R. 107), a Saturday Evening Post article (R. 107-108), whether he advocated the overthrow of the United States government by force (R. 109), whether he would defend the United States against Russia (R. 109), the difference between World War II and the Korean War (R. 115-116), how he would hasten the war effort (R. 115), whether people would be happier if he promised to increase war production (R. 116-117), and his opinion of working conditions in Russia, the United States, England and France (R. 117-118). The Commission did not ask appellant Raley one other question to which it did not indicate that it already had the assumed answer. As to appellant Stern, he was asked questions as to whether several oaths of allegiance he had taken were not inconsistent with his Communist Party membership (R. 135-136), whether his connection with the Progressive Party

or the Commission's statement that he was connected with the Progressive Party was a smear against said party (R. 139), and whether he attended the Lenin School in Moscow (R. 148). To each other question which the Commission asked appellant Stern, the Commission indicated it already had the assumed answer. As to appellant Brown, the Commission questioned him about his educational background (R. 150), and his participation in the 1947 Cincinnati municipal election (R. 164). To each other question which the Commission asked appellant Brown, the Commission indicated it already had the assumed answer. In summary, the hearings indicate that the Commission's primary, if not sole, purpose was to disclose and expose the witnesses as possible subversives, which purpose was included in the Commission's spacious mandate. (Ohio R. C. Sec. 103.34 (B)).

To a great majority of the questions the appellants invoked their privilege against self-incrimination under the Constitution of the United States or the Constitution of the State of Ohio or both. The chairman of the Commission frequently informed the appellants that such privilege was available (R. 99, 134, 157), and on the trial of this case testified that it was the policy of the Commission not to press for answers to incriminating questions (R 40). At no time was the possible applicability of the Ohio Immunity Statute (R. C. 101.44), on which the Supreme Court of Ohio based its affirmance of the ultimate convictions of these appellants, mentioned. Appellants' assertion of the privilege was in all but a very few instances automatically accepted by the Commission (R. 77-165).

Frequently the appellants were asked questions concerning speeches they had made, discussions they had led, and political activity they had engaged in (R. 88, 92-93, 96, 97-100, 107, 108-109, 111-112, 117, 136, 139, 145-146, 156, 160). Appellant Brown was even queried as to his support of

candidates and issues in the Cincinnati municipal election of 1947 (R. 163-164).

2. Proceedings

More than six months later the appellants were separately indicted by the Grand Jury of Hamilton County, Ohio, for refusing to testify as to certain specified questions asked them in that proceeding in violation of Ohio Revised Code Section 2705.02 (formerly O. G. C. 12137).[1] To each of these specified questions each appellant had asserted the privilege against self-incrimination guaranteed by the Ohio and federal constitutions, or language indicating such privilege. In only one instance did the Commission specifically order and direct an answer after the privilege had been asserted (R. 132) and in only several other instances did the Commission question the applicability of the privilege (R. 85, 91, 99, 106). In all other instances the assertion was automatically accepted. And in no instance were the appellants confronted with the clear-cut choice of answering or being held in contempt. Although appellant Raley had asserted the privilege to over 100 questions, he was indicted as to only 16. Appellant Stern had asserted the privilege to over 70 questions and was indicted on only 2. Appellant Brown had asserted the privilege to over 70 questions and was indicted as to only 4. There is no apparent basis for determining why the specified questions were chosen. For example, appellant Raley was indicted for asserting the privilege to eight "Do you know (named individual)?" questions, although he had asserted the privilege to many other like questions (R. 89, 90, 98), and appellants Brown and Stern had also done the same (R. 140-141, 162-163).

[1] The questions forming the separate counts in the indictments are set out in Appendix "A" with appropriate references to the Record.

Since the cases, although differing as to the wording of each question, involved the same questions of law, by agreement they were tried together before the Court of Common Pleas, Hamilton County, Ohio. Motions to quash, pleas in abatement and demurrers to the indictments were overruled. A jury trial was waived. The chairman, one member, the counsel, and the reporter of the Commission testified as to the procedure of the Commission and the records of the Cincinnati Hearings before which the appellants had been subpoenaed. The cross-examination attempted to determine the purpose of the Cincinnati Hearings. The only answers given were these:

> "... to investigate un-American activities ... (R. 36)
>
> "... to learn what, if anything, they (the appellants) knew about communist activities in the Cincinnati area" (R. 37).
>
> "... (appellants) ... were in position to furnish information ... to the General Assembly which might be used in the intelligent consideration of laws to be considered or passed by the Ohio General Assembly" (R. 55).
>
> "... (appellants) ... were in a position to furnish information concerning the communist party in the State of Ohio" (R. 55-56).

In most instances objections by the State to questions as to the purpose of calling the appellants and as to the information the Commission already had about the appellants was sustained (R. 35, 36, 37, 57, 60-65).

In addition, the cross-examination of the chairman of the Commission brought out that it was the policy of the Commission not to press for answers to questions considered incriminating since, as to such questions, the witnesses had the right to refuse answers (R. 40).

After oral argument in which the appellants urged all their constitutional rights, the Trial Court found each appellant guilty of contempt as charged under each count in the indictments. Each appellant was sentenced to ten days in jail under each count, the sentences to run concurrently, and each was find $500 and costs under each count, the fines as to all but the first count in each indictment being remitted. A motion for a new trial was overruled. Sentences were stayed pending appeals.

On appeal, where the cases were consolidated, the Court of Appeals for the First Judicial District of Ohio, after oral arguments and briefs, in which appellants urged all their constitutional rights, affirmed the convictions on all counts involving questions asked by a Commission member and reversed on all counts involving questions asked only by counsel of the Commission (R. 173-196).

On appeal, after oral arguments and briefs in which appellants urged all their constitutional rights, in a 4-3 decision the Supreme Court of Ohio affirmed the judgments of conviction (R. 201-241). The majority based its decision, which it also was rendering in the companion case of *State of Ohio* v. *Morgan*, on the applicability of the Ohio Immunity Statute (R. C. Section 101.44), conceding that the chairman of the Commission, when he stated that the privilege was available and thus the Immunity Statute not applicable, "obviously misstated the law" (R. 222). The dissent by Judge Hart was based on the applicability of the Fifth Amendment to the United States Constitution to the Commission hearings (R. 230-235). A second dissent by Judge Stewart stated:

> "It seems to me that, since the defendants were apprised by the commission at the time they were testifying they had a right to refuse to answer questions which might incriminate them, they could not possibly

in following the admonition of the commission be in contempt of it except possibly as to the questions which the defendants were directed to answer" (R. 237).

A third dissent by Judge Taft was based on statutory construction not in issue before this Court.

An appeal was docketed in this Court on August 10, 1956. On June 27, 1957 this Court vacated the judgments of the Supreme Court of Ohio and remanded the case for reconsideration in the light of *Sweezy* v. *New Hampshire*, 354 U. S. 234 and *Watkins* v. *United States*, 354 U. S. 178 (R. 248).

On reconsideration, after oral argument and briefs, the Supreme Court of Ohio adhered to its former judgments. The decision was a brief Per Curiam opinion (R. 251) in which four of the judges joined, one dissented, and the remaining two who sat did not indicate either a concurrence or dissent. The application for rehearing was denied.

Summary of Argument

I.

It is clear that state legislative investigations are capable of infringing the constitutional liberties of individuals. *Sweezy* v. *New Hampshire*, 354 U. S. 234; *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449. These two cases along with *Watkins* v. *United States*, 354 U. S. 178 and *Quinn* v. *United States*, 349 U. S. 155, have defined the constitutional standards which legislative investigations must meet in order to safeguard the freedom of witnesses compelled to testify. In this case all of these standards were violated.

The authorizing resolution conferred unlimited discretion upon the Ohio un-American activities commission. Its potential sweep was all-inclusive since it authorized an investigation of "All facts concerning persons . . . whose activities might adversely affect . . . the functioning of

any agency of the state or national government. . . ." Such broad and ill-defined jurisdiction nullified the authority of the Commission and deprived appellants of their constitutional rights under the Due Process Clause. *Sweezy*, supra; *Watkins*, supra.

The Commission clearly invaded appellants First Amendment freedoms of speech and association. It demanded from appellants information about their political affiliations and activities, associations, public protests and statements, thoughts and opinions. For example, one appellant now stands convicted of contempt for refusing to tell whether he was active in the support of any candidate or issue on the 1947 Cincinnati election ballot. These unwarranted intrusions were never justified as being connected with some fundamental interest of the state. Precious constitutional liberties cannot be impinged without such justification. *Sweezy*, supra; *N. A. A. C. P.*, supra; *Watkins*, supra.

Appellants never had any clear notion of why their testimony was required nor of the purpose of the hearings at which they testified. The unlimited mandate was not a guide. Clarification was neither volunteered by the Commission nor given in response to appellants' questions. It was then impossible for these appellants and any counsel they might have had and is now impossible for any court to determine whether the questions asked appellants were pertinent to the legislative inquiry.

Appellants were informed by the Commission that their state and federal constitutional privilege against self-incrimination was available. Their frequent assertions of it were in all but an occassional instance accepted. They invoked it as to all questions for which they now stand convicted for refusing to answer. Their invocations at such times were in most instances accepted by the Commission without comment. In several instances the Commission only

asked how the question was incriminating. In only one instance was a direct order to answer given. In no instance were appellants ever specifically confronted with the clear-cut choice of answering or being charged with contempt.

Appellants could not determine pertinence, were subjected to a needling inquisition, and never were informed that the Commission considered their refusals to answer the questions which form the counts in their indictments contemptuous. Due process prohibits their convictions. *Sweezy*, supra; *Watkins*, supra; and *Quinn*, supra.

The mandate to the Commission directed it to promote "means of disclosing those persons . . ." and the hearings demonstrated that the Commission's evident purpose was to stigmatize appellants by exposing them to the glare of unfavorable publicity. Over ninety percent of the questions asked were of the leading, cross-examining, "Is it not a fact" type. Past arrests were highlighted and accusations of prior "false and fraudulent" actions leveled. The Commission in no way evidenced any purpose to discover facts which might be used for lawful legislative ends. The appellants were subjected to brutal inquisition not legitimate interrogation. This infringed due process. *Sweezy*, supra; *Watkins*, supra.

II.

The un-American activities commission of Ohio was obviously engaged in ferreting out what it considered, under a far-reaching mandate, to be subversive or seditious. Congress had by federal legislation preempted this field and thereby precluded state legislation therein. These appellants were compelled to testify almost exclusively as to their alleged "subversive" or "Communist Party" activities and associations. If a state cannot constitutionally legislate in this field, it cannot constitutionally compel testimony concerning it. The Commission had no lawful legislative

purpose. *Pennsylvania* v. *Nelson*, 350 U. S. 497; *Sweezy*, supra; *N. A. A. C. P.*, supra.

III.

Appellants were unequivocally advised by the Commission that the privilege against self-incrimination was available. The chairman of the Commission testified that it was the policy of the Commission not to press for answers to incriminating information. The Commission therefore held and these appellants were assured that the Ohio Immunity Statute was not applicable. Nevertheless the Ohio Supreme Court held that since the Immunity Statute was applicable, the appellants' assertion of their privilege was contumacious. These appellants were convicted of willfully and deliberately defying the Commission by asserting their privilege even though the Commission had advised and accepted their use of the privilege. This is tantamount to entrapment. It makes a mockery of "fair play." It violates due process. *Smith* v. *O'Grady*, 312 U. S. 329; see *Palko* v. *Connecticut*, 302 U. S. 319.

IV.

The Ohio Commission was directed to investigate crimes against the federal government and other states and to "Maintain a liaison with any agency of the federal, state, or local governments in devising and promoting means of disclosing" subversive purposes. The Commission therefore purported to be an arm of the federal and other state governments in crime detection and enforcement. The Ohio Immunity Statute which was held applicable to the proceedings of this Commission does not and could not grant immunity from prosecutions by other governments and could not prohibit the use of appellants' compelled testimony in such prosecutions.

The Fifth Amendment privilege is emasculated if it is not available to witnesses in proceedings where the state is in effect an instrument of federal investigation. Certainly under such circumstances the Due Process Clause should be interpreted to include that Fifth Amendment guarantee. Due process is violated if the officials of one state can compel, through a state immunity statute, individuals to incriminate themselves under federal statutes. See *Knapp* v. *Schweitzer*, 357 U. S. 371; *Ullmann v. United States*, 350 U. S. 422; *Palko* v. *Connecticut*, supra.

ARGUMENT

APPELLANTS WERE CONSTITUTIONALLY PROTECTED AGAINST THE COMPELLED TESTIMONY DEMANDED OF THEM BY THE OHIO UN-AMERICAN ACTIVITIES COMMISSION.

I.

The Constitutionally Required Standards for Legislative Investigations Were Unequivocally Violated by the Un-American Activities Commission of Ohio at the Hearings at Which These Appellants Were Compelled to Give Testimony.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution applies to state legislative investigating bodies. This Court in *Sweezy* v. *New Hampshire*, 354 U. S. 234 and *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, stated that the Due Process Clause protected witnesses from unjustified invasion by state legislative inquiry. The Court insisted in these cases that a free society cannot be assaulted and breached by turning otherwise lawful legislative investigations into political inquisitions and trials. The Court did more than require legislative investigations to conform to the broad reach of the Due Process Clause. In *Sweezy*, *N. A. A. C. P.*, and in *Watkins* v. *United States*, 354 U. S. 178 and *Quinn* v. *United States*,

349 U. S. 155, it established clear standards. It asserted that the multitude of legislatures, legislative investigating bodies, and witnesses, are not only guided by what is "implicit in the concept of ordered liberty" but also by defined precedent. For, as Mr. Justice Frankfurter said in another context, which is as applicable to investigating bodies as to policemen, in his dissenting opinion in *Harris* v. *United States*, 331 U. S. 145 at p. 173:

> "To sanction conduct such as this case reveals is to encourage police instrustion upon privacy, without legal warrant, in situations which go even beyond the facts of the present case. If it be said that an attempt to extend the present case may be curbed in subsequent litigation, it is important to remember that police conduct is not often subject to judicial scrutiny. *Day by day mischief may be done and precedents built up in practice long before the judiciary has an opportunity to intervene.*" (Emphasis supplied)

A. THE DELEGATION OF AUTHORITY TO THE COMMISSION WAS SO SWEEPING, INDISCRIMINATE AND VAGUE THAT THE CONSTITUTIONALLY REQUIRED PRELIMINARY CONTROL BY THE OHIO LEGISLATURE WAS NON-EXISTENT.

The mandate to the Commission was of such breadth and scope that it in effect authorized the Commission to investigate any person about any subject. The sweep of the definition of subversive persons or groups extended way beyond "conduct which is only remotely related to actual subversion and which is done completely free of any conscious intent to be a part of such activity." *Sweezy* at p. 247. For the Commission was authorized to investigate:

> "All facts concerning persons . . . whose activities might adversely affect . . . the functioning of any agency of the state or national government . . ."

The mere recitation of this authority suffices to show that the Commission was without restriction and being without restriction was without definable purpose. This Court has found more restrictive mandates fatally vague:

> "In deciding what to do with the power that has been conferred upon them, members of the Committee may act pursuant to motives that seem to them to be the highest. Their decisions, nevertheless, can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it. Yet it is impossible in this circumstance, with constitutional freedoms in jeopardy, to declare that the Committee has ranged beyond the area committed to it by its parent assembly because the boundaries are so nebulous." *Watkins* at p. 205.

> "The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from petitioner must be treated as the absence of authority. It follows that the use of the contempt power . . . was not in accordance with the due process requirements of the Fourteenth Amendment." *Sweezy* at pp. 254-255.

This Commission was likewise without authority. Neither this Court nor the Ohio courts can determine with any assurance that the appellants refused to answer questions on matters which the Ohio Legislature sought information. Their convictions therefore violate due process and must be reversed.

B. THERE WAS NO CLEAR DETERMINATION BY THE OHIO LEGISLATURE THAT THE AUTHORIZED INQUIRY INTO THE AREA OF THE FIRST AMENDMENT FREEDOMS WAS JUSTIFIED BY A SPECIFIED LEGISLATIVE NEED.

Appellant Brown, who had been subpoenaed to give testimony, sat alone before the Commission, unrepre-

sented by counsel. The Commission had in no way indicated why he was before it and evidently was confused as to his union affiliations (R. 164-165). The Commission had an unlimited mandate to investigate. Appellant Brown was asked by the chairman of the Commission:

> "Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the ballot in that election?" (R. 163).

Appellant Brown now stands convicted of contempt for refusing to answer such question. And at the trial of this case the objection by the State to a question concerning the relevance of such inquiry to the investigation was sustained (R. 63-64). The opinion in *Sweezy*, supra, at pp. 250-251 states:

> "Our form of government is built on a premise that each citizen shall have the right to engage in political expression and association. This right was enshrined in the first amendment of the Bill of Rights . . .
>
> We do not now conceive of any circumstance wherein a state interest would justify infringement of rights in these fields."

In his concurring opinion in *Sweezy*, supra, at p. 266, Mr. Justice Frankfurter wrote:

> "In the political realm, as in the academic, thought and actions are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election."

At these same hearings appellant Stern was asked about his work in the Progressive Party and found guilty of contempt for refusing to answer (R. 139). On the trial in

this case when the counsel for the Commission was asked as to the relevancy of the questioning concerning the Progressive Party, an objection by the State was sustained (R. 61-62). And appellant Raley was sentenced for refusing to respond to inquiries about pamphlets he had distributed (R. 99) and public protests he had made (R. 96). And appellant Brown was also asked about Progressive Party activities (R. 156). Many other questions involved appellants' associates and associations. *N. A. A. C. P.*, supra, held that free association was integral to our democratic commitments:

> "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment which embraces freedom of speech." (at p. 460)

United States v. *Rumely*, 345 U. S. 41, confirmed that the First Amendment prohibits legislative inquiry where it prohibits legislation. And *De Jonge* v. *Oregon*, 299 U. S. 353, held that associates and associations could not be the leverage by which the First Amendment freedoms could be impaired:

> "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." (at p. 365)

These hearings were held on October 20, 1952 with a national election day only several weeks' away. The Commission's authority was sweeping and unrestricted. It proceeded to compel testimony concerning political beliefs and activities. In doing so it struck at the very heart of a demo-

cratic society and in a way proscribed and condemned by this Court itself. Throughout the hearings many of the questions asked these appellants involved their opinions, their affiliations, their public protests and the like. Freedom is more than the specific commands of laws and constitutions. Freedom encourages public political expression. Freedom welcomes discussion and protests. So when authority, whether high or low, compels citizens of this country to reveal, to explain and to justify their participation in public affairs whether at the voting booth or in newspaper interviews or in discussions of international or economic problems, it is required to show that a paramount interest of the state in obtaining this information transcends the freedom of the individuals questioned. It must demonstrate an overriding need to resort to procedures which will compel many people to withdraw from their community affairs, or to speak more cautiously, or to associate less freely, in order to avoid the subpoena, the focus of publicity, and the multitude of needling questions by investigating committees which must be answered under penalty of contempt.

There is nothing in the Record nor, it is submitted, could there be anything in the Record, which shows that Ohio found that a compelling legislative purpose required such a bruising invasion of these precious constitutional liberties. The "mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights. . . . We cannot simply assume . . . that every Congressional investigation is justified by a public need that overbalances any private rights affected." *Watkins*, supra, at p. 198. The State of Ohio has not "demonstrated an interest in obtaining the disclosures" it sought from appellants "to justify the deterrent effect" such disclosures have "on the free exercise" by appellants "of their constitutionally protected right of association." *N. A. A. C. P.*,

supra, at p. 463. The state of Ohio has not shown that its subordinating interest is compelling. *Sweezy*, supra, at p. 265 (concurring opinion).

C. THE APPELLANTS WERE NOT ABLE TO DETERMINE WHETHER THE QUESTIONS ASKED THEM WERE PERTINENT TO THE MATTER UNDER INQUIRY NOR WERE THEY GIVEN ANY INDICATION THAT THE COMMISSION REJECTED THEIR ASSERTIONS OF THEIR PRIVILEGE AGAINST SELF-INCRIMINATION AND CONSIDERED SUCH ASSERTIONS CONTUMACIOUS.

Each of these appellants now stands convicted and sentenced for committing an act—i.e., refusing to answer a question—which at the time he committed it neither he nor this Court could have determined was an illegal act and therefore punishable by fine and imprisonment for contempt. From the confusing breadth of the legislative mandate to the Commission these appellants could not discover whether the questions asked them were authorized by the Ohio Legislature, were responsive to the legislative purpose for which the Commission had been established, and were pertinent to the matter under inquiry. It should not be overlooked moreover that the indictments did not allege that the questions which appellants refused to answer were pertinent to any legislative inquiry (R. 10, 14, 16). This Court stated in *Watkins*, supra, at pp. 208-209:

> "It is obvious that a person compelled (to determine the pertinence of the question) is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense. The 'vice of vagueness' must be avoided here as in all other crimes."

Certainly the mandate to the Commission could not be used by these appellants as a guide to the matter under inquiry or to the pertinence of questions asked them. In addition, moreover, they received no clarification from the Commission. In *Barenblatt* v. *United States*, 252 F. 2d 129, the Court of Appeals, with four judges dissenting, found that the investigating committee and its counsel had gone to some length to indicate the pertinency of the questions and that the subject of the investigations was not a "mere re-hash" of the vague authorizing resolution. It concluded that the witness was in a position to judge the pertinency of the questions. Such was not the situation in this case. The Commission did not even attempt to state, clarify or define the subject of the investigation or the purpose of compelling appellants' testimony. It either foreclosed discussion of the matter (R. 108, 146-147, 150-151) or used equally vague generalities (R. 78, 80-81, 116).

An investigating body operating under a mandate which has not been carefully drawn and the legislative purpose of which is obscure easily degenerates into conducting trials not investigations. Due process does not permit private citizens who have not been indicted for any crime to be subjected to wholesale inquisition and the glare of malevolent publicity. No witness, no matter how well informed, can protect himself from such an assault. Even if he had counsel present with full authority to advise and object, the absence of any basis for determining pertinence makes such assistance unavailing. The language of this Court in *Watts* v. *Indiana*, 338 U. S. 49, 55 is as persuasive and as valid when applied to legislative interrogation as when applied to police interrogation:

> "Protracted, systematic and uncontrolled subjection of an accused to interrogation by the police for the purpose of eliciting disclosures or confessions is subversive of the accusatorial system."

And Justice Frankfurter in his concurring opinion in *Sweezy*, supra, at pp. 263-264 pointed out:

> "This kind of evil grows by what it is allowed to feed on. The admonition of this Court in another context is applicable here. 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.' *Boyd v. United States*, 116 U. S. 616, 635."

The Record shows that in only one instance did the Commission specifically order and direct an answer (R. 132). Thus, in all but that one instance the appellants had every reason to assume that the Commission had accepted their assertions of the privilege. In a great majority of the questions asked, including the questions which formed the counts in the indictments, the Record shows that the Commission without comment or rebuttal moved on to the next question. These appellants were never "confronted with the clear-cut choice between compliance and non-compliance, between answering the question and risking prosecution for contempt." *Quinn*, supra, at p. 166. See *Flaxer* v. *United States*, (October Term, 1958 No. 60 decided December 15, 1958). Certainly the actions, responses and statements of the Commission when the appellants asserted their privilege fell far "short of the prior positive notification of a possible criminal penalty for a procedural condition precedent to the imposition of such penalty." *Daschbach* v. *United States*, 254 F. 2d 687, 691. Penal consequences do not follow a wrong guess at legislative interrogations:

> "The witness is not required to enter into a guessing game when called upon to appear before a committee. The burden is upon the presiding member to make clear the directions of the committee, to consider any

reasonable explanation given by the witness, and then to rule on witness's response." *United States* v. *Knapp*, 102 F. Supp. 757, 759.

Does due process prevail when a citizen is subpoenaed before a legislative committee which is authorized under its mandate to investigate "All facts concerning persons . . . whose activities might adversely affect . . . the functioning of any agency of the state . . . ", receives absolutely no information from the Commission as to the matter under inquiry at that session or the purpose of compelling his testimony, asserts his constitutional rights both under the United States and Ohio Constitutions in answer to a question, is given not even the slightest hint that the Commission does not accept his assertion, and then later is indicted, convicted, and sentenced to fine and imprisonment for such assertion? Surely it does not or its high function in preventing the decay of a free society has been mutilated. Only by insistent judicial commands will a free society be assured that the pattern of conduct of its public officials—legislative and administrative—habitually conforms to approved standards and does not lapse, by design or inertia, into the high-handed and persecutorial conduct characteristic of public officials in a dictatorship. The Due Process Clause bars legislative investigations which violate our basic notions of "fair play" and vitiates convictions resulting therefrom.

D. THE HEARINGS BEFORE WHICH THESE APPELLANTS WERE COMPELLED TO TESTIFY DEMONSTRATE THAT THE COMMISSION WAS PURSUING THE UNLAWFUL LEGISLATIVE PURPOSE OF ATTEMPTING TO DISCLOSE AND EXPOSE THE APPELLANTS AS "SUBVERSIVES."

The mandate to the Commission directed it to devise and promote "means of disclosing those persons . . . who seek to destroy the government of this state or of the United States by force, violence, intimidation, sabotage, or threats of the same." And throughout the hearings it is clear that the Commission appeared almost exclusively concerned with trying to prove that the appellants engaged in illegal or "subversive" activities. Each of the following typical questions was preceded by "Is it not a fact" or similar language:

> ". . . Victor Decavitch identified you to your face as a member of the Communist Party . . .?" (R. 84).
>
> ". . . Marjorie Gruss . . . accused you to your face of having been a member of the Communist Party . . .?" R. 86).
>
> ". . . you were arrested by the Davenport, Iowa, Police Department . . . ?" (R. 136).
>
> ". . . you were again arrested by the Davenport, Iowa, Police Department . . . ?" (R. 137).
>
> ". . . when you falsely and fraudulently signed that affidavit . . . ?" (R. 143).
>
> ". . . you founded . . . the South Avondale Playground Mothers Club, in order to attempt to secure recruits for the Communist Party?" (R. 146).
>
> ". . . you obtained a false and fraudulent medical certificate . . . ?" (R. 153).
>
> ". . . you falsely and fraudulently obtained money from the State of Ohio . . . ?" (R. 162).
>
> ". . . you are now . . . an active member of the Communist Party . . . ?" (R. 162).

Appellants were barraged with such questions. There is not the slightest suggestion in any question or statement by the Commission at these hearings indicating that it was seeking information or facts on which to recommend legis-

lation to the Ohio Legislature (R. 75-165). In fact, the chairman in his opening statement at the hearings defined the Commission's purpose by stating that appellants feared "exposure of un-American activities. . . ." The appellants were treated as though they were on trial as criminal defendants. It was an inquisition not an investigation. It was exposure not inquiry.

> ". . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible." *Watkins*, supra, at p. 187.

Unfortunately for our society many legislative investigating committees have constantly revealed a desire to stigmatize, to expose, and to assume the role of judge and jury in the establishment of public opinion and policy. (See *Barsky* v. *United States*, 167 F. 2d 241; Carr, *The Un-American Activities Committee*, 18 U. of Chicago Law Review 598 (1951); Gelhorn, *The States and Subversion* (1952); Barrett, *The Tenney Committee: Legislative Investigations of Subversive Activities in California* (1951); Countryman, *Un-American Activities in the State of Washington* (1951).[2] This is not a legislative function and when it results in subjecting private citizens not only to needling inquisitions but also to fines and imprisonment, it violates their guaranteed liberties.

---

[2] Cases now pending in this Court further corroborate the abuses which characterize many of these committees. *Barenblatt* v. *United States* (October Term—1958, No. 35); *Scull* v. *Virginia* (October Term—1958, No. 51); *Uphaus* v. *Wyman* (October Term—1958, No. 778).

II.

The Ohio Un-American Activities Commission Was Authorized and Directed to Investigate in the Area of Sedition in Which Area United States Congressional Action Has Preempted and Superseded the Power of the State.

In *Pennsylvania* v. *Nelson*, 350 U. S. 497, this Court held that Congress had occupied the field of sedition and subversive activities to the exclusion of parallel state legislation and that the dominant interest of the federal government in that field precluded state intervention. Thus, the Ohio Legislature could not constitutionally enact any legislation in the area over which this Commission had been given such broad powers of investigation: "national defense," "the overthrow or reform of our constitutional governments by force, fraud, violence or other unlawful means"; "allegiance to a foreign power"; "activities (which) might adversely affect the contribution of this state to the national defense" or the "safety and security of this state . . . or national government."

Since the Legislature was precluded from legislating in this field of subversion and sedition (see *Commonwealth* v. *Gilbert*, 134 N. E. 2d 12 (Mass. 1956)), it had no legitimate legislative function to perform in investigating in this field. Appellants subpoenaed to testify before a Commission, which was "in the legislative branch of the government" (R. C. 103.31), could not be compelled under penalty of contempt to respond to an inquiry which was not "related to and in furtherance of a legitimate task" of the legislature. *Watkins*, supra, at p. 187.

In fact these appellants were almost exclusively interrogated about alleged Communist Party activities and associations in and out of the State of Ohio. The chairman and counsel of the Commission moreover testified that the purpose of the investigation of these appellants was only in

connection with Communist Party activities (R. 37, 55-57). Not only does seditious Communist Party activity necessarily involve the nation, but in addition the Smith Act (18 U. S. C. Sec. 2385) proscribes activity in connection with all governments in the United States.

Due process certainly forbids citizens to be fined and imprisoned for refusing to testify in front of a legislative commission which had no lawful legislative purpose.

III.

Although Appellants Were Specifically and Repeatedly Advised by the Commission That They Were Protected by Their Constitutional Provilege Against Self-Incrimination, Their Convictions Were Finally Sustained by the Supreme Court of Ohio On the Basis That They Were Not Protected by Such Privilege Since the Ohio Immunity Statute Removed the Need For It.

Appellants have been fined and sentenced for contempt of the Commission not because they did not accept the instructions of that Commission but because they did accept the instructions of that Commission. The Commission advised each of them clearly and unequivocally that he would not be compelled to answer questions which might tend to incriminate him. The chairman of the Commission corroborated this as the "policy of the Commission" in his testimony. And the appellants asserted their privilege to each of the questions which form the counts in their indictments. Nevertheless the Supreme Court of Ohio held, after conceding that the chairman of the Commission "obviously misstated the law", that since under the Immunity Statute the privilege was not available, the use of the privilege was intentional and willful contumacy. It is this reasoning which sustains appellants' convictions.

The Court of Appeals for the First District of Ohio said in this case (R. 196):

> "... Even assuming the applicability of the immunity statute, the state still had the burden of proving that the refusal to answer was the deliberate act of the defendant, with the knowledge of the consequences, in order to give the act the character of contumacy essential to a conviction for contempt."

How can the State show that appellants' assertions were deliberate defiances with knowledge of the consequences when they were made with the advice and consent of the very body of which they are now held to have been in contempt? Judge Stewart in his dissent in the Supreme Court of Ohio asserted (R. 237):

> "It seems to me that, since the defendants were apprised by the commission at the time they were testifying that they had a right to refuse to answer questions which might incriminate them, they could not possibly in following the admonition of the commission be in contempt of it except possibly as to the questions which the defendants were directed to answer."

If due process means "fair play," certainly these appellants have been denied it.

> "The allowance of the privilege would be a mockery of justice, if either party is to be affected injuriously by it." *Phelin* v. *Kenderdine*, 20 Pa. 354, 363. See *Johnson* v. *United States*, 318 U. S. 189.

It is not claimed that the Commission knowingly decoyed appellants into this position. But is the unsavory character of entrapment substantially mitigated if public officials unwittingly mislead citizens into fines and imprisonment? Was it incumbent on the appellants to reject the privilege proffered by the Commission?

> "For his petition presents a picture of a defendant, without counsel, bewildered by court processes strange

and unfamiliar to him, and inveigled by false statements of state law enforcement officers into entering a plea of guilty." *Smith* v. *O'Grady*, 312 U. S. 329, 334.

This Court cannot tell what answers these appellants might have given had the applicability and constitutionality of the Ohio Immunity Statute been made clear to them. Certainly convictions cannot be sustained on assumptions of what might have been. It is a reasonable deduction, moreover, that the seemingly inconsistent and sporadic selection of questions on which the indictments were based stems from an acceptance by the State at that time that the answers to the other questions were protected by the privilege. And that through its highest court the State changed its mind—all to the injury of the appellants. The "canons of decency and fairness which express the notions of English-speaking peoples . . ." (*Rochin* v. *California*, 342 U. S. 165, 169) invoked by due process require "that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions." *Herbert* v. *Louisiana*, 272 U. S. 312, 316. See also *Palko* v. *Connecticut*, 302 U. S. 319; *Twining* v. *New Jersey*, 211 U. S. 78; *Snyder* v. *Massachusetts*, 291 U. S. 97. A society which ostracizes the unfair and exalts the fair cannot tolerate the procedures which would send these appellants to jail.

IV.

The Ohio Immunity Statute Which Was Applied In This Case Does Not and Could Not Grant Immunity From Prosecution by the United States or Other States and Yet the Un-American Activities Commission of Ohio Was Directed to Make Disclosures About Matters Which Could Become the Basis for Prosecution Under Federal and State Laws to Any Agency of the Federal, State or Local Governments.

The mandate of the Ohio un-American activities commission directs an investigation, among other things, of "all facts relating to the activities of persons, groups and organizations" having or suspected of having "the overthrow or reform of our constitutional *governments* by fraud, force, violence or other unlawful means"; of "All facts concerning persons, groups and organizations . . . whose activities might adversely affect the contribution" of the State of Ohio "to the *national* defense" and "the functioning of any agency of the state of *national government*, . . ." "The operation and effect of the laws of this state, of the *several other states*, and of the United States, which purport to outlaw and control" certain enumerated activities and "to recommend such additional legislation or revision of existing laws as may seem advisable or necessary;" and "Maintain a liaison with any agency of the *federal, state,* or *local governments* in devising and promoting *means of disclosing* those persons and groups who seek to alter or destroy the government of this state or of the *United States* by force, violence, intimidation, sabotage, or threats of the same." (Emphasis supplied.)

For the present issue, the crucial aspect of the Commission's objectives was the delegation of the right to investigate and communicate beyond Ohio's jurisdictional limits.

In contrast, the Ohio Immunity Statute is necessarily narrow in benefit. For while the Commission was investigating as widely as its mandate directed, that mandate could not confer immunity beyond the limits of Ohio. The appellants had reason to forecast the transmission of any testimony given by them to agencies of other governments for use completely unaffected by any immunity conferred by Ohio R. C. 101.44.

A. THE PRECISE QUESTION BEFORE THIS COURT IS ONE OF FIRST IMPRESSION.

The question whether a witness may invoke the privilege against self-incrimination in an investigation of federal and extra-state matters by a state agency, either under the Fifth Amendment or as a matter of due process under the Fourteenth Amendment, has never been decided by this Court. Cf. *Knapp* v. *Schweitzer*, 357 U. S. 371; *Feldman* v. *United States*, 322 U. S. 487; *United States* v. *Murdock*, 284 U. S. 141; *Jack* v. *Kansas*, 199 U. S. 372. In fact in the *Knapp* case the court specifically refused to decide whether a witness could successfully assert his federal privilege in a state proceeding for the reason that "the record . . . is barren of evidence that the state was used as an instrument of federal prosecution or *investigation*." (Emphasis supplied). *Knapp* v. *Schweitzer*, supra, p. 380. Far from barren on the point, the mandate of the Commission in the instant case sprouts with evidence that the state has made itself a federal instrument. Moreover, one concurring and three dissenting judges in the *Knapp* case indicated with varying degrees of emphasis that the doctrine expressed in the *Feldman* case,—that evidence compelled under a state immunity statute can be used later in a federal prosecution where there was no federal participation in the compulsion—was not settled and reconsideration not foreclosed. Of course, if such use can be made of state-compelled testimony, the inefficacy of immunity proffered by a state is obvious. Cf. *Ullmann* v. *United States*, 350 U. S. 422.

In the *Murdock* case, the court was careful to point out that only federal questions were in issue and the question of the effect of the assertion of the privilege had it rested "upon any claim that the inquiries were being made to discover evidence of crime against the state law" id. 149, was not before it. "Nothing of state concern was in-

volved" id. 149. Implicit in the careful exclusion of the state question from the force of the *Murdock* rule is the suggestion that had a state question been involved the court might not have ruled against the availability of the privilege.

B. THE FEDERAL PRIVILEGE AGAINST COMPULSORY SELF-INCRIMINATION IF OTHERWISE APPROPRIATELY INVOKED, SHOULD BE READ INTO THE DUE PROCESS CLAUSE AND BE AVAILABLE TO THE WITNESS IN A STATE CONDUCTED INQUIRY INTO FEDERAL MATTERS.

These appellants were the unwilling instruments of a state inquiry into extra-state and federal affairs. Here the Commission undertook investigation and liaison looking to disclosures of crimes (potentially involving these appellants) to governments—federal, state and local—other than its own. Under such circumstances the rule announced in *Counselman* v. *Hitchock*, 142 U. S. 547, is particularly apposite. For that case established the general proposition that a valid immunity statute must protect as broadly as the privilege. It remained for later decisions to qualify the generality of the *Counselman* rule but never in the situation which prevailed here.

Where federal agents have participated officially in state sponsored searches and seizures, the legality of the search will be considered as though the search itself was a federal undertaking and the standards of the Fourth Amendment of the United States Constitution applied in a federal prosecution. See *Byars* v. *United States*, 273 U. S. 28, 32-33, *Feldman* v. *United States*, supra. The majority opinion indicated by way of dictum in *Knapp* v. *Schweitzer*, supra, at 380, that with similar participation in securing compelled testimony the protection of the Fifth Amendment

could be asserted in a federal prosecution. Thus a federal element may raise federal rights.

Early in the history of this Court, Chief Justice Marshall had occasion in *United States* v. *Saline Bank*, 1 Peters 100 to consider the effect of a bill of discovery in federal court on the possibility of penalties against the defendants under Virginia statutes:

> "It is apparent, that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it." Cf. dictum by Justice Holmes in *Bollman* v. *Fagen*, 200 U. S. 186, 195 (1906).

It is clear that Chief Justice Marshall had no difficulty with the conclusion that in federal inquiries involving a state statute defendants are protected against disclosures exposing them to penalties under state law. Passing the implications of the case for the whole concept of duality in relation to immunity statutes having application only in a single jurisdiction, it would seem to follow by analogy that a state agency sponsoring inquiry into the federal domain cannot require witnesses, as in the present case, to make revelations exposing them to federal penalties.

In the significant and comparatively recent case of *United States* v. *DiCarlo*, 102 F. Supp. 597, 605-606, where, reviewing a witness's refusal to testify before a senate committee empowered to investigate state crime, the court said:

> ". . . Congressional Power to investigate violations of state laws does not include the power to nullify the state constitutional rights of a witness.
>
> * * *

> The foregoing considerations lead inescapably to the conclusion that the defendant is entitled to immunity against disclosures that might incriminate him of violations of state law as well as immunity against self-incrimination of a federal crime. If this conclusion cannot be said to rest upon the principle of state supremacy in the domain of reserved powers, . . . it finds ample support in the principle that the Fifth Amendment operates as a restraint upon federal officers investigating state crimes."

It is equally clear that the power of a state legislative investigating commission to investigate the operation of federal law with a duty to maintain liaison with and "disclose" crimes to the federal government does not include the power to nullify the federal constitutional rights of a witness. And these appellants are entitled to have the privilege of the Fifth Amendment read into the Fourteenth to protect them against disclosures that may incriminate them of violations of federal law. Obviously immunity against self-incrimination of a state crime does not reach the issue. For this reason appellants' conviction should be reversed.

C. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT SHOULD, UNDER THE CIRCUMSTANCES OF THIS CASE, SUSTAIN THE RIGHT OF THESE APPELLANTS TO REMAIN SILENT REGARDLESS OF POSSIBLE IMMUNUITY UNDER THE STATE STATUTE.

Where a state gratuitously injects itself into federal affairs, as here, the propriety of the availability to witnesses of the privilege against self-incrimination is especially appealing as a matter of due process. Otherwise witnesses in the posture of the present appellants, presumably guarded by both the Ohio and the federal privilege against self-incrimination, would be denied the benefit of both.

The Ohio effort at immunity, broadly phrased as it is, can have no effect outside state limits. Cf. *Jack* v. *Kansas*, supra, at p. 380. For the Ohio legislature has no paramount areas of concern equivalent to the national security which would empower it to prevent use of immunized evidence or block prosecution in "any court" as this court held the Congress could in *Ullmann* v. *United States*, supra. See also *Brown* v. *Walker*, 161 U. S. 591, dissent by Justices Shiras, Gray and White at 622-624.

The reach of the Due Process Clause is such that no rigid formula can be devised, or stated, for its universal application. From this there is no necessary implication that any right equivalent to a right within the first eight Amendments to the Constitution is *not* protected by it *if justice demands*. Cf. *Twining* v. *New Jersey*, 211 U. S. 78, 99, and see especially *Rochin* v. *California*, 342 U. S. 165, 169.

Does a particular action by a state "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental' " *Palko* v. *Connecticut*, 302 U. S. 319, 324-325. If so, due process prohibits it. What more classic occasion for its application than when a state, in effect, announces to witnesses:—We propose to take away your right to silence under state law and find you in contempt. But if you talk, we propose to communicate the content of your speech to the federal government. Be silent and land in our jail. Speak and land in theirs.

This hypothesis exaggerates the state's attitude only slightly and appellants' choice not at all. Here is a shocking example of that unfairness which activates the proscriptions of due process and justifies the reversal of the convictions below.

CONCLUSION

For the foregoing reasons it is submitted that appellants were constitutionally protected against the compelled tes-

timony demanded of them by the Ohio un-American activities commission, and that the judgments affirming their convictions and sentences must accordingly be reversed.

Respectfully submitted,

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JACK G. DAY,
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APPENDIX A

Questions for Which the Appellants in Refusing to Answer Were Indicted.

APPELLANT RALEY

1. "Q. Now, Mr. Raley, as an official of the United Electrical Workers, is there any concern among the officials of the possible presence of Communist Party members among the leadership of the UE?" (R. 83).

2. "Q. Now, as a matter of fact, Victor Decavitch was formerly district president of the UE, was he not?" (R. 85).

3. "Q. Now, as a matter of fact, that was the headquarters of Local 766 of the UE at that time; isn't that correct?" (R. 91).

4. "Q. According to the Daily Worker for June 8, 1949, five United Electrical Workers issued statements—five Electrical leaders, pardon me, issued protests against the jailing of Gus Hall, Henry Winston and John Gates, and it listed those five protestors as Lem Markland, Herbert Hirschberg, Joe Sheetz, John Thomas, and Talmadge Raley. Did you as a UE leader issue a protest against the jailing of these three men?" (R. 96).

5. "Q. Do you know Herbert Hirschberg?" (R. 97).

6. "Q. Do you know Joseph Sheetz?" (R. 97).

7. "Q. Do you know John Thomas?" (R. 97).

8. "Q. As a matter of fact every one of these individuals are leaders of the UE, or were leaders of the UE at that time, were they not, Mr. Raley?" (R. 97).

9. "Q. Let me refer to an article carried in the Cincinnati Post on September 13, 1949, captioned 'Schools Trace Communist Propaganda. Union Agent Denies Kits Are Leftist,' and refers to an interview with you. Do you recall that interview?" (R. 99).

10. "Q. I wonder if you are familiar with, or happen to know Jerome Joseph?" (R. 103).

11. "Q. Victor Pasche; do you know him?" (R. 103).

12. "Q. Do you happen to know Herbert Siens?" (R. 103).

13. "Q. Do you happen to know Marie Reed Haug?" (R. 103).

14. "Q. Do you happen to know Paul Shepherd?" (R. 103).

15. "Q. Isn't it a fact that the people I have just listed are all prominent in the leadership of the UE in Cleveland, Ohio?" (R. 103).

16. "Q. Who has a similar—holds your position in the Cleveland area at the present time, with the union?" (R. 106.)

APPELLANT STERN

1. "Q. Where do you reside, Mr. Stern?" (R. 132).

2. "Q. I ask you if it is not a fact that Frank Hashmall assigned you to work in the Progressive Party in this county?" (R. 139).

APPELLANT BROWN

1. "Q. And what has been your educational background?" (R. 150).

2. "Q. Mr. Brown, were you ever employed by the Fisher Body Plant at Norwood, Ohio?" (R. 163).

3. "Q. Is there anything about being employed at that plant which might tend to incriminate you?" (R. 163).

4. "Q. Were you active in 1947 in the election in the City of Cincinnati in supporting any candidate or any issue on the ballot in that election?" (R. 163).

Brief for Appellant

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No. 175

In the

Supreme Court of the United States

October Term, 1958

TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN,

Appellants,

vs.

STATE OF OHIO,

Appellee.

Appeal From the Supreme Court of Ohio

BRIEF FOR APPELLEE

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(h) The refusals of these defendants constituted purposeful, obvious, and direct contempt, having as its sole real purpose the obstruction and sabotage of the commission's legitimate interests.

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. 175

TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN,

Appellants,

vs.

STATE OF OHIO,

Appellee.

BRIEF FOR APPELLEE

I. THESE APPEALS ARE NOT AUTHORIZED

(a) The federal statute provides that final judgments of the highest court of the state (in this instance, two judgments of the Supreme Court of Ohio **State v. Raley, et al.**, 164 O.S. 529 and **State v. Raley, et al.**, 167 O.S. 295) may be reviewed by the Supreme Court of the United States when:

1. The state statute is repugnant to a law of the United States, or

2. A state statute is repugnant to the Constitution of the United States.

The only state *law* in this record which could possibly be repugnant to any *law* of the United States, is the statute

providing for the creation and operation by the General Assembly of an Un-American Activities Commission (**Sections 103.31 et seq.** of the **Revised Code of Ohio**, and particularly **Sections 103.34** and **103.35** of the **Revised Code** relating to the powers and duties of the Commission and of its Chairman). The only possible *law* of the United States to which the above statutes are alleged by appellants to be repugnant, is that federal enactment known as the **Smith Act (Title 18, U.S.C., Section 2383).** (emphasis added)

The Smith Act parallels very closely various Criminal Syndicalism penal statutes of the State of Ohio, particularly **Sections 2921.01** to **2921.27 inc.**, and **Sections 2923.12** to **2923.15 inc.** of the **Revised Code.** It should be noted that none of the previous charges, trials, statutes, or convictions involved in these appeals, have any reference whatsoever to the aforesaid statutes. If this were so, the situation presented to the court here would be within this court's determination in **Pennsylvania v. Nelson** which seems to be the sole authority (350 U.S. 497) relied upon by appellants as the basis for conferring appellate jurisdiction upon this court because of a claimed repugnance of two laws.

We are concerned on this aspect of the claim of jurisdiction solely with the right of a state legislature to investigate not only those matters which may have been subsequently found to be inhibited by the Smith Act, *if made the subject of a criminal prosecution*, but also related matters of particular interest to the state as such and not barred to it by **Nelson** or any other known interpretation of the dominant interest of the federal system in certain criminal matters. The investigating commission with which we are here concerned, in addition to any related or over-lapping field of federal activity, was directed to:

> "Investigate, study and analyze * * * persons, groups and organizations * * * whose activities might ad-

versely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government or the industrial potential of this state." (R.C. 103.34(2)).

The commission was also directed to:

"investigate, study and analyze the operation and effect of the laws of this state, of the several other states, and of the United States, which purported to outlaw and control the activities enumerated in this section, and to recommend such additional legislation or revision of existing laws as may seem desirable and necessary." (R.C. 103.34(3))

Nowhere in the Smith Act itself or as it is interpreted and applied in **Nelson**, can there be found any prohibition against legislative interest in the above fields even if such legitimate interest were ultimately expressed in new or amended statutes.

The statutes providing for an Ohio Un-American Activities Commission, however, do not even touch upon the state criminal prosecutions prohibited by **Nelson.** What appellants are asking this court to do, in accepting jurisdiction on this basis, is to tell a state that there are fields in which federal interest is so dominant that a state legislature *may not even consider or cogitate* upon the state's relationship to them. The complete absurdity of such a position may be demonstrated by the body of the **Constitution of the United States**, itself where, in **Article V**, it is provided that:

"On the application of the legislatures of two-thirds of the several states" (the Congress shall call a convention for proposing amendments to this Constitution).

Appellants interpretation of the *right* of the state legislature to investigate fields even of *exclusive* federal authority, could completely nullify an important provision of the Federal Constitution itself. (emphasis added).

We are concerned, at this point, not with the *right* of the state to enact and enforce anti-subversive laws prohibited to it. We are concerned solely with the *right* of a state legislature to ascertain facts upon grave matters of importance to both the state and the nation as a whole. These appellants have been convicted of contempt of the legislature and have not been convicted of any criminal violations even remotely concerned with any federal law.

Consequently, it is submitted that this court does not have jurisdiction of these appeals on the ground that the state statute in question is repugnant to any law of the United States.

(b) Appellants further invoke the appellate jurisdiction of this court on the ground that the proceedings had in these cases are repugnant to the Constitution of the United States, particularly the 14th Amendment thereof, in that there has been a failure of due process of law.

Without infringing upon a further and more detailed discussion of the application of due process of law to the basic merit of these convictions, it should be noted, as to the claimed appellate jurisdiction of this court, that these convictions were had pursuant to a general statute of the state providing for the creation of a legislative commission; giving its chairman certain powers relative to the attendance of witnesses and certain instructions on the procedure to be followed in the case of a witnesses' refusal to be sworn, to testify, or to produce documents. Again, by specific statute, in prosecutions resulting from any contempts believed to have been committed before

the commission, the matter was required to be referred to normal and orthodox enforcement procedures through the office of the Prosecuting Attorney in the state court of general civil and criminal jurisdiction by way of information or indictment leading to a normal, standard trial at which the defendants would be entitled by State Constitution to a jury trial (unless they themselves chose specifically to waive it as they did in these cases) and to an ordinary criminal judgment provided in a general criminal contempt statute. Aside from the manner of calling the alleged violation of law to the attention of the usual prosecuting and judicial officers, the due process of law applied in this case is different in no respect whatsoever from that provided for any other criminal charge in the State of Ohio. The same may be said for the state appellate proceedings following the convictions of these appellants.

The record is clear that with the exception of one refusal by the defendant Stern (Where do you reside, Mr. Stern? R.-132) every other refusal for which these defendants were indicted related to the field of activity in regard to either labor or industry within the State of Ohio, —matters which are of particular and legitimate concern to the state; specifically delegated to the commission as part of its statutory duty; and unrelated to any dominant or exclusive federal interest. The sole possible exception to this condition, in addition to the one noted as to Stern above, is the question directed to the defendant Brown (R.-163), where it was asked whether or not he was *active in an election*. It will be noted that Brown was not asked what candidate or issue he supported, but merely whether or not he exercised the freedom of speech and electioneering to which he was unquestionably entitled. (emphasis added)

On the basis of firmly established and universally applied state standards for the orderly and normal enforcement of its penal statutes, there can seem to be no possible doubt but that these defendants were accorded full and complete procedural due process of law as that constitutional requirement is enjoined upon this court in its appellate functions under the applicable federal statute.

(c) There is a further claim to appellate jurisdiction in this court by virtue of various cases which culminate in **Watkins v. United States,** 354 U.S. 178 and **Sweezy v. New Hampshire,** 354 U.S. 234. Claim is made by appellants that the delegation of authority to the commission was, (inter alia,) sweeping, indiscriminate, vague, without any clear determination that the authorized inquiry was justified by a legislative need; that witnesses were not able to determine whether questions propounded to them were pertinent, and that the commission's proceedings were, accordingly, without due process. Such claims and the commission's authority, if supportable by the record, might cause these appeals to fall within the realm of the two cases cited above. Upon examination of the record, however, it is apparent that the questions to which these defendants refused an answer are exactly those which this court indicates on page 213 of the **Watkins** decision would have had pertinency in the light of the commission's specific direction to inquire into the contribution of the state to the national defense, the industrial potential of the state, and the safety and security of the state.

> "The most serious doubts as to the Subcommittee's 'question under inquiry', however, stem from the precise questions that petitioner has been charged with refusing to answer. Under the terms of the statute, after all, it is these which must be proved pertinent. Petitioner is charged with refusing to tell the Subcom-

mittee whether or not he knew that certain named persons had been members of the Communist Party in the past. The Subcommittee's counsel read the list from the testimony of a previous witness who had identified them as Communists. Although this former witness was identified with labor, he had not stated that the persons he named were involved in union affairs. Of the thirty names propounded to petitioner, seven were completely unconnected with organized labor. One operated a beauty parlor. Another was a watchmaker. Several were identified as 'just citizens' or 'only Communists'. When almost a quarter of the persons on the list are not labor people, the inference becomes strong that the subject before the Subcommittee was not defined in terms of Communism in labor.

"The final source of evidence as to the 'question under inquiry' is the Chairman's response when petitioner objected to the questions on the grounds of lack of pertinency. The Chairman then announced that the Subcommittee was investigating 'subversion and subversive propaganda'. This is a subject at least as broad and indefinite as the authorizing resolution of the Committee, if not more so.

"Having exhausted the several possible indicia of the 'question under inquiry', we remain unenlightened as to the subject to which the questions asked petitioner were pertinent. Certainly, if the point is that obscure after trial and appeal, it was not adequately revealed to petitioner when he had to decide at his peril whether or not to answer. Fundamental fairness demands that no witness be compelled to make such a determination with so little guidance. Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, *upon objection of the witness on grounds of pertinency,* to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. To be meaningful, the explanation must describe

what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it." (emphasis added)

These defendants, and particularly Raley, were not asked, as subjects of the indictment, whether they knew communists or whether other individuals were communists. Questions are directed obviously to the proposition of whether or not certain named individuals held certain positions in a particular industrial union and whether or not there is any concern among the officials of that union about the general subject of communist infiltration. Brown's refusal is to questions relating to the fact of his employment by a large industrial plant near Cincinnati. The commission's interrogation of Stern never "got off the ground", so that the question relative to the witnesses' understanding of its pertinency could not possibly have been determined by anybody, including this court.

The **Watkins** case holds variously that the inquiry must be related to the legitimate task of a legislature; that such investigations into individual affairs are invalid if unrelated to the legislative purpose. Syllabi (j) and (n) are particularly pertinent in this respect since the commission, in regard to these defendants and the refusals charged to them, very obviously was delving into a field related to the security of the state, its industrial potential and its possible contribution to national defense. It should further be noted that in **Watkins** the court sets out specifically the duty of the commission when questions are refused on grounds of pertinency. No such refusals on any such ground were ever claimed by any of the defendants in these cases.

It is difficult to see any application of **Sweezy v. New Hampshire** to the instant appeals other than that they both rise out of state legislative action. Questions which the

defendants refused here obviously did not concern themselves with any matter of academic freedom, freedom of speech, or freedom of assemblage, which this court held in **Sweezy**, as it had previously done in **Watkins**, were among certain individual rights, generally classifiable as 1st Amendment Rights, which could be subjected to legislative inquiry only under the most pressing circumstances. The attempted invasion of these rights in **Sweezy** is apparent. The alleged invasion of any such rights in the various counts contained in these indictments is wholly fictitious.

Appellee accordingly submits to the court on the subject of its appellate jurisdiction in these cases: that the state statute involved is not repugnant to any federal law under the theory of **Nelson**, or any other discernable theory; that it is not repugnant to the 14th Amendment of the Federal Constitution because the criminal procedure itself, and the witness activities before the commission from which the charges resulted, were in strict conformity with the commission's duty and with firmly based, normal criminal practice; and that the nature of the questions refused by the witnesses indicates clearly that they were pertinent and necessary in the light of the commission's proper interest in matters of exclusive concern to the State of Ohio and did not constitute unwarranted or unlawful invasions of the rights of the defendants either under Article I, Sections 1, 3, 7, and 10 of the Bill of Rights of the Constitution of Ohio, or under the 1st and 5th Amendments to the Constitution of the United States. Appellee accordingly prays that the question of jurisdiction heretofore deferred by this court in this matter be now determined adversely to the claimed entitlement of these defendants to the appellate jurisdiction of this court.

II THE ISSUE OF PERTINENCY HAS NO BEARING ON A DETERMINATION OF THESE CASES

Appellants lean heavily upon the cases of **Sweezy v. New Hampshire**, 354 U.S. 234 and **Watkins v. United States**, 354 U.S. 178, the former case being cited ten times in their brief and the latter nine times. It is appropriate in considering the problem at hand to inquire into the fact situation in both these cases. It is evident that both **Sweezy** and **Watkins** involved significantly different fact situations. In the **Watkins** case, the Chief Justice in delivering the opinion pointed out: (Page 182)

> "It is not the case of a truculent or contumacious witness who refused to answer all questions or who by boisterous or discourteous conduct disturbs the decorum of the committee room. Petitioner was prosecuted for refusing to make certain disclosures which *he asserted to be beyond the authority of the committee to demand.*" (emphasis added)

An examination of the facts indicate that Watkins in a prepared statement had indicated his willingness to cooperate with the committee except as to certain questions. Such questions he would refse to answer *a priori* on the basis that:

> "I do not believe that such questions are relevant to the work of this committee" (Page 185).

Thus was the issue joined. Watkins in the first instance raised the question of pertinency as to specific areas in which the committee sought information.

With a similar posture, Sweezy confronted his interrogators. In the opinion of the Chief Justice speaking for the Court (Page 238,) the following statement of facts appear:

> "During the course of inquiry petitioner declined to answer several questions. His reasons for doing so were given in a statement he read to the committee

at the outset of the hearing. *He declared he would not answer those questions which were not pertinent to the subject under inquiry.*" (emphasis added)

Both the statements of Watkins and Sweezy were courteous, temperate and in keeping with the solemnity of a duly authorized committee of Congress of the United States. These statements raised debatable legal issues. Compare them however with the abusive, violent, and vitriolic statements of Raley and Stern (R. 123-130) and Brown (R. 164-165) wherein the Ohio State Un-American Activities Commission and the Un-American Activities Committee of the Congress of the United States are vilified in these terms:

"Un-American characters who used witch hunting to hide their sell out of the people." (R. 125)
"Most other members of this commission have similar anti-union and anti-people record in the State Legislature." (R. 126)
"They have and will continue to parade scores of criminals, paid labor spies, stool pigeons, forgers, . . . and other types of gutter filth" (R. 127).
"These hearings are also used by the politicians to distract the attention of the voter from their sorid (sic) do-nothing record" (R. 127). "In recent years many hundreds of citizens . . . have been persecuted by daring to defend the handiwork of the fathers of our country . . . by refusing to cooperate with the committees similar to this" (R. 129).
"I have been personally called before the House Un-American Activities Committee of Washington, D.C. where paid labor spies and other gutter filth was used in an attempt to frame me and help destroy our union" (R. 129).

In the cases at bar, the Committee beyond question or doubt dealt with truculent, scornful and contumacious witnesses. The attitude of these witnesses can best be described in terms of established definitions:

Contempt, Words and Phrases, Vol. 9, page 51

"Contempt means the act of contempting or despising. The feeling with which one regards that which is esteemed mean, vile or worthless; disdain; scorn."

United States v. Ault, 263 Federal 800, 810.

"Contempt consists of a clear and open, willful disregard for authority and dignity of the court in a manner contrary to statute."

In Re: Presentment by Grand Jury of Stetson, 45 F. Supp. 567, 557.

At no time did any witness suggest that any answer was withheld because of a question of pertinency. One witness, Brown, came closest when he stated in response to the question of why he refused to answer:

"No, I just don't think it is your business" (R. 150).

It is worth mention in this connection that although trial was had, appeal taken to an Appellate Court, four appearances had in the Supreme Court of Ohio and written applications for re-hearing made; at no time, in any fashion, has either counsel or appellants suggested that the refusals to answer were based upon the pertinency of any of the questions. The precise time that appellants first sought shelter under the theory of pertinency coincided with this court's decisions in **Watkins** and **Sweezy**, nearly five years after appellants' appearance before the commission and over three years after the trials for contempt.

Not only by statements do these appellants differ from both Watkins and Sweezy, but by demeanor and attitude they leave little doubt as to their disdain and scorn for the Commission. Witness Raley was asked two hundred and nine questions. He answered seventy-six and declined

to answer one hundred and thirty-three. Raley was accompanied by counsel and on thirteen separate and distinct occasions conferred with him prior to answering questions. (R. Pages 80, 83, 91, 92, 94, 99, 100, 101, 103, 108, 113, 122, 123).

Raley concluded his appearance by reading a prepared statement (R. 123-131) in which he states:

> "Knowing the purpose of this Ohio Commission and the people who staff it, I proudly join with other patriotic Americans and also *refuse to cooperate with it*". (R. 130) (emphasis added)

How could a witness more clearly indicate in advance that he would not answer questions, pertinent or not. Along with Barenblatt, (**Barenblatt v. U. S.**, 252 F. 2nd 129, No. 35, October term, 1958) Raley came "prepared to refuse to answer any question of moment."

> "The record of the hearing, at which Barenblatt appeared and during which the questions in controversy were asked is devoid of any objection, interposed on the ground of pertinency. Indeed every indication is that he came prepared to refuse to answer any questions of moment-pertinent or not. He appeared before the subcommittee accompanied by counsel and armed with an eleven page prepared written statement . . ." **Barenblatt, Supra**, Page 134

Counsel for Raley, one Sidney Berger, likewise represented witness Stern (R. 131). This witness was asked one hundred and five questions and refused to answer sixty. His attitude toward the Commission was clearly revealed in the second question asked of him:

> "Where do you reside, Mr. Stern?
> Answer: "I wish to claim my privilege under the Fifth Amendment of the United States Constitution and Section 1, Article 10 of the Ohio Constitution" (R. 132).

At no time did Mr. Stern or his counsel in any fashion question the pertinency of any question asked of him. His repeated answer was "I claim the privilege" or "the same answer." The chairman of the Commission was sufficiently concerned with Mr. Stern's confusing manner of declining to answer questions that he made a specific effort to state that Mr. Stern's use of the phrase "I claim the privilege" or "the same answer" would be understood by the Commission as claim of privilege under the Fifth Amendment of the United States Constitution and Article 1, Section 10 of the Ohio Constitution (R. 134).

Typical of Mr. Stern's responses to questions is the following:

> "The chair requests that you answer the questions put by counsel."
>
> THE WITNESS: *"I will answer your question.* I might add that Mr. Isaacs and the members of this committee are acting under—
>
> CHAIRMAN RENNER: "Before adding anything will you answer the question.
>
> THE WITNESS: *"I will answer the question*
>
> CHAIRMAN RENNER: "After you answer the question you may add something if you wish.
>
> THE WITNESS: *"I decline to answer under the Fifth Amendment.* I might add—
>
> CHAIRMAN RENNER: "You have not answered the question so we will not permit you to add anything. Counsel, will you ask the next question." (R. 144). (emphasis added)

Witness Brown was asked 108 questions, he declined to answer 81. Brown also took occasion at the outset to make clear his position. His language was more in keeping with a participant in a bar room brawl than as a witness called before a Commission of the General Assembly of the State of Ohio.

Mr. Brown was so determined not to cooperate with the Commission that he resisted vigorously any effort by

either counsel or the chairman to place his objections to questions in the record in a fashion wherein he could properly assert his privilege. His truculent attitude continued throughout his questioning. When asked his age, he replied, "You add it up, I told you I was born August 24, 1925, I couldn't be fifty" (R. 151).

As further evidence of his disdain the following excerpts from the record are pertinent:

CHAIRMAN RENNER: "Do you refuse to answer?

THE WITNESS: "The answer is the same.

CHAIRMAN RENNER: "Do you refuse to answer the question?

THE WITNESS: "I invoke the Fifth Amendment of the Constitution of the United States in regard to the question.

CHAIRMAN RENNER: "The Fifth Amendment to the Constitution.

THE WITNESS: "Just a moment, I understand it to mean that I don't have to give evidence that I understand will incriminate me. Since I am not trained legally as you are, *I will decide what is expedient for me to answer and what is not expedient and if you don't like it you can take grounds otherwise.* (emphasis added) (R. 152) . . .

"Now I am going to answer you the way I want to answer you, see. You have got that now? I will again say I invoke the privilege of the Fifth Amendment, I even wrote it down. *I will give it to you to read if you don't understand it otherwise.* (emphasis added)

MR. CORRIGAN: "Mr. Isaacs I noticed the witness has his notebook but he doesn't seem to have a pencil, could he be provided with one.

THE WITNESS: "I have a pencil when I want to use one, thank you. (R. 154)

The care that the commission took to protect this witnesses rights is a matter of record. On Page 158 there is a long dialogue between Mr. Renner and the witness wherein it is obvious that Mr. Renner was seeking to clarify the record and the witness refused to acknowledge that his own rights were being protected. This dialogue culminated in the following:

> CHAIRMAN RENNER: "I am sincerely trying to clarify for the record what you mean each time you say 'the answer is the same'.
>
> THE WITNESS: "Each time I use the words 'the answer is the same' you ask me again what I mean by it and I will explain it.
>
> CHAIRMAN RENNER: "You have told me what you mean by it. I want the record to show that each time that you have used it and each time you propose to use it in the future, it will have that same meaning, is that correct?
>
> THE WITNESS: "No that is not correct, I cannot presuppose what you are going to say and if I make a blank statement like that, you can hold me to that.
>
> MR ISAACS: "Mr. Chairman, I think you are wasting your time trying to save this witness from a contempt citation by reading the grounds.
>
> THE WITNESS: *"You have not had any mercy on me so far Buddy, so don't start now. I will make it plain just how I feel about you. Don't show me no mercy. I wouldn't show you none, believe me."* (emphasis added)

III. IMMUNITY

Basic to any consideration of the position of these appellants is the effect of the Ohio statute on Immunity. This Statute, **R. C. 101.44,** provides as follows:

> "Except a person who in writing requests permission to appear before a committee or sub-committee of the

General Assembly or of either house thereof or who *in writing waives the rights, privileges and immunities granted by this section,* the testimony of a witness examined before a committee or sub-committee shall not be used as evidence in a criminal proceeding against such witness nor shall a person be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter or thing concerning which he testifies or produces evidence. This section does not exempt a witness from the penalties for perjury." (emphasis added)

It should be noted at the outset that an argument vigorously advanced by appellants in the courts below, namely that the Un-American Activities Commission was not a committee of the General Assembly has apparently been abandoned. The decision of the Supreme Court of Ohio in this matter (164 Ohio State 529) disposed of this argument in such fashion that even appellants now seem to concede its validity.

The basic question that must concern this court is whether or not this immunity statute confers sufficient protection as to render inoperative appellant's claim of privilege. This court has held so consistently to an established rule on immunity that no person need be unaware of its existence. Two early determinations of this court on this subject in effect stated the rule in both obverse and converse. It is seen only in its full force by the contrast of the two decisions. In the case of **Counselman v. Hitchcock,** 142 U.S. 547 (1891), this court held upon consideration of a specific immunity statute that the such immunity statute did not give broad enough protection and therefore could not be equated with a claim of privilege by a witness. Shortly thereafter in the case of **Brown v. Walker,** 161 U.S. 591, (1896) in considering another immunity statute the court held that sufficient protection was

granted to the witness and that therefore there was not available to him the privilege of remaining silent. **Counselman** and **Brown** are not inconsistent, the reconciliation is quite simple. Where an immunity statute is broad enough to supplant the privilege, the privilege is no longer available; where it does not, the privilege is available.

To assume that this rule is but sixty years old is not completely correct. The roots of the doctrine extend to the English Common Law and the land mark case of **Queen v. Boyes,** 1 B&S 311, wherein this subject is considered at some length. The inherent danger of extending **Counselman** beyond its own circumscribed boundries is pointed out by Justice Brown in **Brown v. Walker, Supra** at Page 600 in the following words:

> "The danger of extending the principle announced in Counselman is that the privilege may be put forward for sentimental reason or for a purely fanciful protection of the witness against an imaginary danger and for the real purpose of securing immunity to some third person who is interested in concealing the facts to which he would testify. Every good citizen is bound to aid in the enforcement of the law and has no right to permit himself under the pretext of shielding his own good name to be made the tool of others who are desirous of seeking shelter behind his privilege."

Firmly established in **Brown** was the doctrine that even if the grant of immunity by a state court does not grant immunity from prosecution by the federal government, such failure is not a controlling factor.

The question of immunity has returned again and again to this court and consistently this doctrine has been applied. In **United States v. Murdock,** 284 U.S. 136 (1941) the court held:

> "This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him and also that the lack of state power to give witnesses protection against federal posecution does not defeat a state immunity statute. *The principle established is that full and complete immunity against prosecution by the government by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination,* citing in addition to **Counselman** and **Brown, Jack v. Kansas,** 199 U.S. 372, **Hale v. Henkel,** 201 U.S. 43." (emphasis added)

The rule stated in reverse is likewise applicable. This phase of the problem was determined by syllabus in **Feldman v. United States,** 322 U.S. 487 (1943):

> "The Fifth Amendment does not forbid the use in evidence against a defendant in a criminal case in a federal court of self incriminating testimony theretofore compelled under a state immunity statute and without participation by federal officers—in proceedings in a state court."

Justice Frankfurter speaking for the majority took occasion to comment on what had been termed "the great judgment" of Chief Justice Taney in **Ableman v. Booth,** 21 How. 506, 516, who said:

> "The powers of the federal government and of the state although both exist and are exercised within the same territorial limits are yet separate and distinct sovereignties acting separately and independently of each other within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a state judge of a state court as if the line of division was traced by land marks and monuments visible to the eye."

Significant to the issue at hand is the following statement: **(Feldman, supra, 493)**

> "Whether testimony in a New York court should be compelled in exchange for immunity from prosecution under the penal law of New York is for New York to say. For what purposes the United States may deem the disclosure of testimony more important than the prosecution for federal crimes is for Congress to say . . . the immunity from prosecution like the privilege against testifying which it supplants, pertains to a prosecution within the same jurisdiction. Otherwise the criminal law of the United States would be at the hazard of carelessness or connivance in some petty civil litigation in any state court, quite beyond the reach even of the most alert watchfulness by law officers of the government."

As recently as June, 1958 this court has seen fit once again to consider the problem. In **Knapp v. Schweitzer**, 357 U.S. 371, 78 S. Ct. 1302, Justice Frankfurter speaking for the majority restated the principle of law established in **Brown** and **Counselman** and followed for sixty years without exception. On Page 380 of the opinion it is stated:

> "This court with all its shifting membership has repeatedly found occasion to say that whatever inconveniences and embarrassments may be involved they are the price we pay for our federalism, for having our people amenable to—as well as served and protected by both governments. If a person may through immunized self disclosure before a law enforcing agency of the state facilitate to some extent his amenability to federal process or *vice versa* this too is a price to be paid for our federalism. Against it must be put what would be a greater price, that of sterilizing the power of both governments by not recognizing the autonomy of each within its proper sphere.

Within the past sixty days this court has once again considered an immunity question. In the case of **Brown v.**

United States, — U.S. —, (79 S.Ct. 539), the conviction of a petitioner for contempt was affirmed because the applicable immunity statute granted full and complete protection. Justice Stewart in delivering the opinion of the court took occasion to review briefly past consideration of immunity statutes. In the opinion he stated (Page 543):

> "For more than one-half century it has been settled that this statute confers immunity from prosecution coextensive with the constitutional privilege against self-incrimination and that the witness may not therefore lawfully refuse to testify. **Brown v. Walker**, (1896) 161 U.S. 591 . . . Suffice it to repeat that **Brown v. Walker** has become 'part of our constitutional fabric' ".

In view of this consistent line of decisions it remains only to determine whether or not the specific immunity granted by Ohio in **R.C. 101.44** is an adequate substitute for the protective shield of the privilege against self incrimination. In such consideration it should be noted that this statute uses the same form of words construed both in **Brown** and in **Knapp**. Aside and apart from this, the Supreme Court of Ohio has considered this immunity statute and held that it granted sufficient immunity to protect the witnesses involved. **State v. Morgan et al.**, 164 O.S. 529 — on a similar immunity statute see **Mouser v. Public Utilities Commission of Ohio**, 124 O.S. 425. This specific pronouncement by the Supreme Court of Ohio is particularly persuasive in view of the opinion in **Feldman**. It is submitted that the question whether testimony in an Ohio forum should be compelled in exchange for immunity from prosecution under the penal laws for Ohio is for Ohio to say.

In the case at bar the state immunity statute has been drawn as fully and broadly as such statute can be drawn by a state legislature. The statute itself does not even require

any act of the witness to avail himself of its benefits. To the contrary, not only must the witness specifically divest himself of his immunity, *but he must do so in writing.*

It is difficult to subscribe to a proposition of law that would say that personal liberties or personal privileges of a witness are in jeopardy when, in lieu of a privilege against self incrimination, he is cloaked with an immunity from prosecution as broad and as extensive as is within the power of the sovereign state of Ohio to grant. The position of appellants' leads inevitably to the conclusion that the State of Ohio, in the first instance, is prevented from any inquiry of witnesses, not because it has failed to give all the immunity which it can legally give, but because it has failed to give immunity which it cannot legally give.

It should be observed in passing that two of the three appellants herein appeared at the hearing with counsel and with prepared statements. The record reveals that all of the appellants were fully aware of the legal right to decline to answer by reason of fear of self incrimination. Appellants now claim that they and their counsel were misled as to the existence of the immunity statute. Observe the following statement of counsel on the general subject of law: (R. 99)

> "Mr. Berger: Mr. Chairman, you will forgive the witness for taking his legal advice from me, rather than from the committee?
>
> The Witness: If I recall—
>
> Chairman Renner: You may advise your witness what his rights are under the Constitution.
>
> Mr. Berger: I certainly will.
>
> Chairman Renner: I was not aware that you had advised him not to give that answer.
>
> Mr. Berger: I had not. I didn't advise him to give any answer. *I pointed out that you were telling*

the witness what the law is, and with all due respect, that is my function. If he wants to know the law, I think it is I he should ask and not you." (emphasis added)

This court has held that a person is bound rightly to construe a statute . . . a mistaken view of the law is no defense, **Armour Packing Co. v. U. S.**, 209 US 56, 85 **Sinclair v. U. S.**, 279 U.S. 263, 299, **Sanitary Manufacturing Co. v. U. S.**, 226 US 20, 49. It would seem impossible for any layman, much less a lawyer, to misconstrue the Ohio Immunity Statute.

The appellants are now in the position of contending that they and counsel are sufficiently familiar with the law to know the protections of the privilege against self incrimination but not enough of the law to know the same protections afforded by the immunity statute.

There are, doubtless, innumerable immunity statutes the mind of man could devise which would not afford complete protection to a summoned witness. This, however, is not the question at bar. The question here is whether or not this statute under these circumstances afforded sufficient protection to these appellants. If this be answered in the affirmative, these witnesses were obliged to answer.

SUMMARY

The Ohio Un-American Activities Commission was created by the 99th General Assembly of the State of Ohio in a joint action by both houses of the legislature, (Laws of Ohio, Vol. 124, Page 795), under a grant of power in the State Constitution (Art. II, Sec. 8). It began its legal existence on June 18, 1951. It continued its legal existence following the adjournment *sine die* of the 99th General **State ex rel Herbert v. Ferguson**, 142 Ohio State 496, **State of Ohio vs. Morgan, et al., supra.**

While the argument of continuing existence after adjournment was urged by the appellants below, the absence of it from their brief indicates that the point is no longer at issue.

The indictments herein are based upon the statute defining the powers of the chairman as to witnesses. It provides in effect that upon a refusal of a witness to testify to any matters regarding which he may be lawfully interrogated, the chairman may cause a proceeding for contempt to be filed. **(Revised Code 103.35)** In the case of these appellants, the Commission acting by and through a majority of its members adopted resolutions authorizing the chairman in the case of each defendant to institute contempt proceedings. These documents were offered in evidence at the trial of these appellants and became Exhibits Nos. 3, 4, and 5.

It has been the law of the State of Ohio for more than one hundred and fifty years that all crimes in the state are statutory in nature and origin. The general proposition is stated in **Lougee v. State,** 11 O. 68, as follows:

> "The legislature have the power to declare what acts are criminal and they have the same power to prescribe the forms of indictment for the commission of such criminal acts."

This has never been questioned. In addition the legislature has the power to prescribe suitable penalties in case of concern and to provide its own definitions and procedure (**State v. Lingelfelter,** 77 U.S. 523, **Stockton v. State,** 106 O.S. 249.

Pursuant to these well established principles, the General Assembly of Ohio has chosen to define and provide a punishment for this offense.

The series of statutes commencing with **R. C. 2705.02** which covers the elements of and the method of punish-

ment for contempt are readily divisible into the statute 2705.02 which defines the offense itself and the subsequent statutes which provide for the manner of punishment. What the legislature has done by the use of **R.C. 103.35** is to create a new offense, (that of the failure of a witness to respond to the lawful interrogation of a legislative commission) and then provide for the punishment of such offense by reference to the procedure required by the general statutes covering contempt, to wit: **R. C. 2705.03 et seq.**

It will be noted that the Legislature scrupulously avoided any conceivable invasion of judicial perogative in the determination of what is and what is not a crime in the trial of such matters by providing that any matters believed to be contemptuous by the commission itself should be referred without specification to the usual statutory prosecuting officer of the county in which the contempt conceivably occurred, for prosecution in a manner previously determined and referred to by long established law. The statutes in question make it abundantly clear that the conviction for contempt can occur only after proceedings by way of charge and trial have been had in the manner provided by law for criminal offenses generally.

The statute very clearly makes the trial and conviction for the commission of contempt, a matter solely for the concern of the regular, appropriate Courts upon charges in writing filed with the Clerk of Courts. In the cases herein, the charges arise from indictment by a Grand Jury which adds to rather than detracts from the degree of Due Process of Law which the appellants have received and indicates that in these cases the State of Ohio has extended precisely the same kind of "due process" provided by Ohio law to any and all alleged criminals.

Neither **R. C. 103.35** nor **R. C. 2705.02** to which it refers makes it an element of crime that the witness shall be ordered to answer or that he shall be warned that if he

does not he may be subjected to charges. This is not one of the elements which the Legislature has chosen to provide as an act or omission necessary to constitute the offense. The offense clearly becomes complete upon the refusal of a witness to answer a question pertaining to a matter about which he may be lawfully interrogated. It is quite possible that the Legislature could have made an offense of the disobedience of a witness of a lawful order of the commission. That, however, was not the basis of the charges made nor is such an offense provided for and defined in the statutes under which these indictments were returned. The *corpus* of the offense was the refusal to answer to lawful interrogation and the record is clear beyond question that the matter about which these defendants were questioned constituted lawful interrogation and that they did refuse to answer.

The record here shows that due process by every conceivable standard was accorded these appellants. The refusals were properly referred to the Prosecuting Attorney in the county where the offense occurred in the manner enjoined upon the commission by the statute by which it was empowered to function. The appellants were then served with written charges filed with the Clerk of the proper Common Pleas Court in the form of an indictment. They were thereupon brought into Court, given the opportunity to post bond and were assigned a date for trial. Despite the fact that Ohio law does not provide for the appointment of counsel for persons accused of misdemeanors, the Common Pleas Court of Hamilton County, Ohio did appoint counsel for these appellants which counsel included two former judges of the Court of Common Pleas and two former presidents of the Cincinnati Bar Association. The law on contempt is not clear whether or not the accused is entitled to a jury trial. In order that the rights of these

appellants be protected, the question was resolved by giving them an opportunity to have a jury trial. Appellants, however, in writing waived a trial by jury,.(R. 166-68-69) and consented to be tried by the Presiding Judge of the Court of Common Pleas sitting in the capacity both of judge and jury. After preliminary attacks upon the form and sufficiency of the indictments were overruled, the appellants proceeded to trial on a plea of not guilty and interposed as a defense to the allegations of the indictment, the claim that the questions to which answers were refused would tend to incriminate. Thereupon the Court reached a judgment determining that the defense interposed was neither proper nor sufficient and that the offense alleged had been proved.

With this as a background, it is difficult to see wherein these appellants have been deprived in any degree whatsoever of the due process of law to which they were entitled. It is submitted to the contrary that they have been given the benefit of every reasonable doubt, the benefit of every legal proceeding, and the benefit of overwhelmingly meticulous compliance with every requirement of constitutional provision and statutory law leading to their trial and conviction upon the charges presented by the indictment.

Appellee has taken occasion to point out that the majority decision in the recent case of **Brown v. United States, Supra,** strengthened the position of the State of Ohio on immunity. It should be observed here that the dissenting opinion in which the balance of the Court joined strengthened appellee's position that due process has been accorded. In **Brown** the dissent commented unfavorably upon the summary manner in which the petitioner had been sentenced for contempt. It is submitted to the court that it is precisely the vice of shortcuts in criminal procedure

(frowned upon by the dissent,) which have been carefully and scrupulously avoided in the cases at bar. The viewpoint urged by Justice Frankfurter, in **Sacher v. U. S.**, 343 U.S. 1, cited by the dissent at Page — is in accord with the fact situation herein. There has been no shortcut; there has been no summary proceeding; there was instead the procedural regularity deemed essential by Justice Brandeis and Justice Holmes in **Burdou v. McDowell**, 256 U.S. 465, 477 and adopted by this court in **Offutt v. United States**, 348 U.S. 11.

Appellants object in regard to one count that one witness was asked whether he supported any one candidate or issue in a preceding election. (Appellants Brief, page 14) He professes to present this count in the indictment as asking how he voted, why he voted, or whether he voted, invading both the secrecy of the ballot and his right of free speech and expression. It is submitted to the court that neither the government nor our law has reached the sorry condition of violating a citizen's right of free speech by asking a citizen whether or not he chose to exercise the right which was undeniably his. This collateral proposition now brought to the attention of the court demonstrates more effectively and more conclusively than any argument of counsel or any determinations of courts of law, the utter, almost absurd distortion and debasement of a witness's unalienable rights on the one hand and his basic responsibilities on the other.

CONCLUSION

The cases at bar present this court with the example of witnesses before a legislative commission who took every opportunity to indicate utmost contempt for the assembled committee. This court had previously returned these cases to the Supreme Court of Ohio for reconsideration in the

light of two cases where witnesses had carefully and in a reasoned fashion questioned the pertinency of their interrogation. The attempted extension of Watkins and Sweezy to Raley, Stern and Brown presents the precise type of danger that Justice Frankfurter in **Knapp v. Schweitzer, Supra,** mentioned at Page 374. Justice Frankfurter referred to:

> "the momentum of ajuducation whereby a doctrine expands from case to case."

If witnesses who initially decline to answer because of fear of self-incrimination, can five years after the fact successfully thwart the endeavors of a duly constituted legislative commission because an *ex post facto* ground of refusal is suggested then no legislature can ever compel testimony from any reluctant witness under any circumstances. If a legislative commission is to be impaled upon both the prong of a refusal to answer on fear of self-incrimination on the one hand and of pertinency on the other, the area within which such legislative commission can operate would become so circumscribed that its obligation to "Study, investigate and analyze" would become a meaningless one and the value of any legislative investigation destroyed.

It is, accordingly, submitted to the court that these appeals are not well taken under the applicable federal provision. It is further submitted that the defendants were accorded not only complete procedural due process under the law of Ohio, but a surfeit of it if such thing be possible. Even if it should be considered that by some stretch of the imagination or by some tortous reasoning or unforeseeable further development, any of which could justify these defendants in refusing answers to the questions asked on the grounds of self-incrimination; nevertheless, their privileges and safety in this respect would be completely

protected to the extent of the state's power by the immunity statute.

It is further submitted that the questions being pertinent to a legitimate field of inquiry by a duly constituted and instructed legislative commission some inquiry into matters regarded as within the exclusive realm of the First Amendment of the Federal Constitution might be permitted without doing violence to the basic rights of these defendants, but it is also suggested and urged upon this court that the questions for which these refusals were had and indictments returned could not and should not be deemed or interpreted as being of such nature or effect as to infringe the basic freedoms of these defendants.

The court is, accordingly, urged to dismiss the appeals of these defendants, or, in the alternative, upon any consideration of their merits, affirm the previous judgments.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 175

TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN,

Appellants,

v.

STATE OF OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

REPLY BRIEF FOR APPELLANTS

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IN THE

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TALMADGE RALEY, JOSEPH STERN, EMMETT CALVIN BROWN,

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REPLY BRIEF FOR APPELLANTS

A DIRECTION TO ANSWER IS AN ESSENTIAL ELEMENT UNDER OHIO LAW OF THE OFFENSES FOR WHICH THESE APPELLANTS WERE CONVICTED

Appellee in its Brief (pp. 25-26) has asserted that neither Ohio R. C. Section 103.35 nor Ohio R. C. Section 2705.02 requires that a witness be ordered to answer to be subjected to the charge of contempt; that the Ohio Legislature did not choose to require a direction to answer as an element of the offense. This assertion is not supported by any citation of authortiy. Nor could it be since the Ohio Legislature

clearly chose to make a direction to answer a requisite element of the offense of contempt of the un-American Activities Commission of Ohio (hereinafter called Commission). The mandate to the Commission provided (R. C. Section 103.35):

> "In case of . . . the refusal of any person . . . to testify to any matters regarding which he may be lawfully interrogated, or to conform to section 2705.02 of the Revised Code, the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding in contempt to be filed and prosecuted in the court of common pleas of any county under sections 2705.02 to 2705.09, inclusive, of the Revised Code."

Thus the Legislature deliberately chose to subject witnesses before the Commission to the provisions of R. C. Section 2705.02 which is the section covering "ACTS IN CONTEMPT OF COURT" (Appellants' Brief, p. 8), rather than the existing provisions of the Ohio Code covering contempts of the Legislature. Witnesses before the Commission were therefore put squarely on notice that the required elements of a judicial contempt were the required elements constituting a contempt of the Commission. The Supreme Court of Ohio affirmed this conclusion in its opinion in this case in rejecting appellants' attack on the validity of using the judicial contempt section for contempts of the Commission (R. 230):

> "Furthermore, it is clearly not a delegation of judicial power to the un-American Activities Commission but constitutes merely *a definition as to what shall constitute contempt* and a method of procedure by which proceedings may be instituted by the Commission in a judicial tribunal for the punishment of the contempt." (Emphasis supplied.)

And the appellants were indicted solely under the provisions of the judicial contempt section.

If this judicial contempt section had been interpreted at the time these appellants testified before the Commission to require a direction to answer before the offense had been committed, then these appellants could *not* be convicted of contempt unless a direction to answer had been given. And it is clear from the Ohio decisions that this judicial contempt section was so interpreted. *Burnside* v. *Dewstoe*, 90 O. Dec. Rep. 589; see *Hedebrand* v. *State*, 129 O. S. 574. This Court has noted that a direction to answer as a prerequisite to prosecution for contempt has been traditionally and uniformly recognized by both state and federal courts. *Quinn* v. *United States*, 349 U. S. 155, 167-158. The Court of Appeals for the First District of Ohio in its opinion in this case held that a direction to answer was a prerequisite to conviction (R. 184-187). The Ohio rule is stated categorically in 11 Ohio Jurisprudence 2d Section 32, pp. 117-118, covering judicial contempts under R. C. Section 2705.02:

> "But the refusal of a witness to answer questions cannot be unlawful unless the circumstances are such that he is properly required to testify, and unless it appears in some way upon the record that the refusal of a witness to answer was contumacious, he is not in contempt and cannot lawfully be imprisoned for such refusal. Thus, *there must have been a lawful order made to answer the question put to him, and a refusal to obey the order. A mere failure to answer the attorney's question does not constitute a contempt when there has been no order or command by the court that the question be answered.*" (Emphasis supplied.)

Certainly if at the time of the commission of an alleged criminal offense the laws and decisions of the State of Ohio defining that offense require proof beyond a reason-

able doubt of certain essential elements, due process is violated if the state retroactively determines that one of those elements need not be proved and that the alleged offense, absent that required element, constitutes a crime for which the offender could be fined and imprisoned. This Court would without hesitation reverse a conviction for judicial contempt in the State of Ohio if there had been no direction nor order to the witness by the court to answer the question. When a legislative contempt is, in the words of the Ohio Supreme Court, defined by the judicial contempt section, the same result must follow.

It should be noted that the Supreme Court of Ohio in *State of Ohio* v. *Morgan*, 164 O. S. 529, a companion case decided in the same opinion as this case and now on appeal in this Court (No. 463, Oct. Term, 1958), concluded after careful analysis that a direction to answer was not necessary (R. 216-222). *But the appellant in that case was indicted under the legislative contempt section (Ohio R. C. Section 2917.42) and not, as the appellants in this case were, under the judicial contempt section.* The Supreme Court of Ohio furthermore did not specifically reach the question of the requirement of a direction to answer in its opinion in this case. Had it done so, it would have under the existing cases held that such direction was a prerequisite or it would have had to retroactively redefine the offense to the end that these appellants would have been denied due process under the Fourteenth Amendment. Recently this Court has, in both the majority and dissenting opinions, reaffirmed that required procedures in contempt cases be scrupulously observed. *Brown* v. *United States*, __ U. S. __ (79 Supreme Court 539).

The requirement of a direction to answer is even more compelling under the circumstances of this case. The Commission had instructed the appellants that their privilege

against self-incrimination was available and the appellants asserted their privilege to every question for which they were convicted. In all but one instance this assertion was apparently accepted and certainly not specifically overruled by the Commission (Appellants' Brief, p. 29). These appellants now stand convicted since the Supreme Court of Ohio in effect reversed the Commission and held that the privilege was not available to the appellants and that their assertions of it without being countermanded were acts of contempt.

The injury inflicted on these appellants thus becomes doubly glaring. In order to maintain their liberty and property it was incumbent on them under exceedingly difficult circumstances (see *Wilson* v. *United States*, 149 U. S. 60, 66): First, to conclude that a requisite element of the offense with which they had been charged—a direction to answer—would by judicial silence at a subsequent date be jettisoned; second, to conclude that their privilege which the Commission before whom they were testifying assured them was available and two judges of the Supreme Court of Ohio confirmed (R. 230-235; 238-241) would at a subsequent date be held not to be available. This Court has held that due process does not permit persons to be placed in such a position:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453.

Whether this Court rules that the Due Process Clause requires state officials, judicial, legislative or administrative, to order answers before a conviction for contempt can be sustained—a position urged by the appellants in their Brief—, it must certainly rule that if the state law requires

such direction, the Due Process Clause prohibits convictions in cases where no such direction was given.

CONCLUSION

For the foregoing reasons and for the reasons set out in Appellants' Brief filed previously herein, it is submitted that appellants' convictions and sentences violated their constitutionally protected rights under the Due Process Clause and must accordingly be reversed.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 463

ANNA H. MORGAN,

Appellant,

vs.

STATE OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

BRIEF FOR APPELLANT

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* After the indictment in this case, the Ohio laws were revised and the Ohio General Code became the Ohio Revised Code, with each section being renumbered. Because some changes were also made in statutory language in the Revised Code, this brief uses General Code section numbers and language.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 463

ANNA H. MORGAN,

Appellant,

vs.

STATE OF OHIO,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

BRIEF FOR THE APPELLANT

Opinions Below

The opinion of Judge Bryant of the Court of Common Pleas of Franklin County, Ohio, Criminal Division, overruling appellant's demurrer to the indictment was filed October 13, 1953 (R. 9-36). Appellant was tried, without a jury, November 16, 1953. Judge Gessaman, of the Court of Common Pleas of Franklin County, Ohio, rendered his decision on May 3, 1954, together with a written opinion (R. 86-92). The Court of Appeals of Franklin County, Ohio, affirmed the judgment without opinion November 1, 1954 (R. 96). None of these opinions is reported.

The first opinion of the Ohio Supreme Court was rendered on February 23, 1956 (R. 103-131), and is reported at 164 O.S. 529, 133 N.E.2d 104. The dissenting opinion of

Justice Hart (R. 131-136) is reported at 164 O.S. 556-561. The opinion of Justice Stewart, dissenting in part (R. 136-139), is reported at 164 O.S. 561-564. The dissenting opinion of Justice Taft (R. 139-141) is reported at 164 O.S. 564-566.

Following this Court's per curiam opinion of June 24, 1957, at 354 U.S. 929 (R. 146-147), remanding the case to the Ohio Supreme Court, that Court rendered a brief per curiam opinion on February 11, 1958 (R. 148-149), Justice Taft dissenting (R. 149), reported at 167 O.S. 295, 147 N.E.2d 847.

Jurisdiction

The judgment of the Supreme Court of the State of Ohio (R. 148-149) was entered on February 11, 1958 (R. 148-149). Appellant's application for rehearing was denied on March 5, 1958 (R. 145). The notice of appeal to this Court was filed in the Supreme Court of Ohio on April 29, 1958 (R. 145). On October 20, 1958, this Court entered an order granting leave to proceed in forma pauperis and an order postponing further consideration of the question of jurisdiction to the hearing of the case on the merits, immediately following argument in *Raley, et al.* v. *State of Ohio,* Oct. Term 1958, No. 175.

The jurisdiction of this Court rests on 28 U.S.C., Sec. 1257(2).

This Court has jurisdiction to hear an appeal testing the constitutionality of a state statute establishing a legislative investigation committee in the field of "subversive activities". *Uphaus* v. *Wyman,* Oct. Term 1958, No. 34, 356 U.S. 926.

This Court has jurisdiction to hear an appeal testing the constitutionality of a state statute or constitutional provision abridging First and Fourteenth Amendment freedom

of thought and association by coercing persons into refraining from proscribed speech and association. *Speiser* v. *Randall*, 357 U.S. 513; *N.A.A.C.P.* v. *Alabama ex rel. Patterson*, 357 U.S. 449.

This Court has jurisdiction to hear an appeal testing whether the method established in a state statute or constitutional provision for determining the political beliefs and affiliations of a person is fair or whether it constitutes a denial of due process of law under the Fourteenth Amendment. *Speiser* v. *Randall*, cited *supra*, at 520.

This Court has jurisdiction to review convictions for contempt of state legislative investigating committees in order to determine whether a witness was deprived of due process of law under the Fourteenth Amendment. *Sweezy* v. *New Hampshire by Wyman*, 354 U.S. 234.

And this Court has jurisdiction to determine whether the separation of the power of a state legislature to conduct investigations from the responsibility to direct the use of that power causes a deprivation of the constitutional rights of individual witnesses and a denial of due process under the Fourteenth Amendment. *Sweezy* v. *New Hampshire by Wyman*, cited *supra*.

Constitutional Provisions and Statutes Involved

United States Constitution:

Article I, Section 8, Sub-section (1)

"The Congress shall have power:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;".

Article I, Section 10, Sub-section (1)

"No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

Article II, Section 2, Sub-section (1)

"The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

Article VI, Sub-section (2)

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes of Ohio:

The primary statute involved is the act establishing the Un-American Activities Commission of Ohio, Sec. 76-28 to 76-35, General Code, reproduced in the Appendix, *infra*.

G.C. Sec. 12845. Refusing to testify before general assembly or a committee thereof.

Whoever, having been subpoenaed or ordered to appear before either branch of the general assembly, or before a standing or select committee of the general assembly, or either branch thereof, fails so to do, or, having appeared, refuses to answer a question pertinent to the matter under inquiry, or to produce, upon reasonable notice, books, papers or documents in his possession or under his control, pertinent thereto, shall be fined not less than one hundred dollars nor more than five thousand dollars.

G.C. Sec. 60. Testimony before committee not to be used in criminal prosecution of witness; exception.

Except as to a person who, in writing, requests permission to appear before such committee or sub-committee or who, in writing waives the rights, privileges and immunities granted by this section, the testimony of a witness examined before a committee or sub-committee shall not be used as evidence in a criminal proceeding against him, nor shall a person be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he so testifies, or produces evidence, documentary or otherwise; but nothing herein shall exempt a witness from the penalties of perjury.

Questions Presented

(1) Whether the statute establishing the Un-American Activities Commission of Ohio is repugnant to the United States Constitution because:

(a) The state has no power to act in national and international affairs, or in the field of subversion, which Congress has fully occupied;

(b) The Commission's investigation of the political beliefs, associations and activities of private citizens necessarily abridged their constitutionally protected freedoms;

(c) The requirement that the Commission "disclose" all persons and groups having certain objectives serves no valid legislative purpose and pins a "badge of disloyalty" on individuals, without due process of law;

(d) The language of the statute is vague;

(e) The vague grant of authority to the Commission made it impossible for a reviewing court to judge whether the Commission had ranged outside the area committed to it by its parent assembly, and insulated the Assembly from the witnesses subjected to the sanctions of compulsory process.

(2) Whether the Ohio immunity act, as interpreted by the Supreme Court of Ohio, is repugnant to the United States Constitution because:

(a) The act displaces the right of a witness to refuse to answer questions on the ground of self-incrimination when the answers could become the basis for prosecution in the federal jurisdiction, which is coterminous with state jurisdiction;

(b) The act, as interpreted and applied, permits a witness to be convicted of contempt for refusal to answer questions which he was not directed to answer, and without instructing him that he is clothed with immunity from state prosecution;

(c) The act is applied to the Un-American Activities Commission, although, by its terms, it can only be applied to a "committee of the General Assembly", which the Commission was not.

(3) Whether appellant was denied due process of law under the Fourteenth Amendment by conviction for wilful refusal to answer 32 questions pertinent to the matter under inquiry, when:

(a) The evidence does not support a finding that appellant wilfully refused to answer the questions;

(b) The evidence does not support a finding that the questions asked were pertinent to the matter under inquiry;

(c) The evidence supports a finding that appellant was asked only one question, and that in an area protected by the First and Fourteenth Amendments, and outside the jurisdiction of the State of Ohio.

Statement of the Case

In March, 1951 the Ohio General Assembly, by joint resolution, established a Joint Committee on Subversive Activities (R. 39). The Committee held hearings until, in June, 1951, the 99th Ohio General Assembly established the Ohio Un-American Activities Commission by passage of Senate Bill 358, approved by the Governor (becoming Sec-

tions 76-28 to 76-35, Ohio General Code). (See Appendix, *infra*.)

The Commission was given the power and charged with the duty:

"(1) To investigate, study and analyze

(a) all facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(b) all facts concerning persons, groups and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government or the industrial potential of this state;

(c) the operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(2) To maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same."

The statute creating the said Commission was passed at the close of the session of the 99th General Assembly. The Commission therefore came into being and operated after the *sine die* adjournment of the parent legislative body (R. 47).

The Un-American Activities Commission held public hearings from January, 1952 until the end of March, 1952, calling persons who testified at length as cooperative witnesses, including Harvey Matusow.[1] On March 31, 1952, hearings were held in Columbus, Ohio at which one John DeLong testified at length. He described his relationship with the appellant, Anna Morgan, told where she lived, stated that she was a member of the Communist Party and active in its organizational work (R. 60-62).

On the next day, April 1, 1952, the Commission continued its Columbus hearings by calling four witnesses pursuant to subpoenas. The first three witnesses appeared without counsel. They were the first witnesses called before the Commission who refused to answer any of its questions.

The year was 1952. Several cases were pending in state and federal courts concerning the rights of a witness before a legislative investigating committee, and it was common knowledge that witnesses were refusing to answer questions based on their "privilege against self-incrimination under the Fifth Amendment." This Court had not yet reviewed any contempt convictions resulting from legislative investigations into the political beliefs and affiliations of witnesses appearing under compulsory process.[2]

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[1] See discussion of this witness in *Communist Party* v. *Subversive Activities Control Board*, 351 U.S. 115, 126.

[2] This Court decided the *Nelson* case in January 1954, and the *Emspak*, *Bart* and *Quinn* cases, 349 U.S. 190, 219 and 155, in May 1955. *Yates, et al.* v. *United States*, 354 U.S. 98, and *Watkins* v. *United States*, 354 U.S. 178 and *Sweezy* v. *New Hampshire*, 354 U.S. 234, were decided in June 1957.

Several state and federal prosecutions were pending against leaders of the Communist Party.[3]

The April 1, 1952 hearing opened with the swearing of one Robert E. L. Terrill, who appeared without counsel. Mrs. Morgan, appellant herein, was present throughout Mr. Terrill's testimony (R. 62). No preliminary statement was made by the Commission as to the purpose of the hearing, and "No fixed rules for the conduct of hearings were determined at any time or adopted by the Commission" (R. 40).[4]

The witness declined to answer any of the questions asked of him by counsel for the Commission. Mr. Renner, a Cincinnati attorney serving as Speaker of the House of Representatives of the Ohio Assembly, served as chairman of the Commission. At the conclusion of the questioning by Commission counsel, Mr. Renner said to the witness:

> "Mr. Terrill, you have the right to refuse to answer any question, the answer to which might incriminate you. Otherwise, you are required under the law to answer the questions that are put to you by this Commission which is a Commission constituted by the people of Ohio to make a study of Communism, and un-American Activities in Ohio" (R. 62).

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[3] Within months after this hearing, Communist Party leaders were indicted under the Smith Act in Cleveland, Ohio. *United States* v. *Brandt, et al.*, 256 F. 2d 79. And see cases listed at I CIVIL LIBERTIES DOCKET 3, at #110.1, and at 5, at #130.1; and II CIVIL LIBERTIES DOCKET 6-7, at #241 and #244, including federal Smith Act prosecutions, and prosecutions under state anti-sedition statutes. In at least one instance, in the neighboring state of Pennsylvania, a group of Communist Party leaders were concurrently defendants in federal Smith Act and state anti-sedition act proceedings. Ohio has long had a criminal syndicalist law, Ohio Gen. Code Sec. 13421-23 to -26, similar to the Pennsylvania act involved in *Pennsylvania* v. *Nelson*, 350 U.S. 497.

[4] Testimony of Gordon Renner, Chairman of the Ohio Un-American Activities Commission, at trial of appellant.

Called as the second witness, appellant also appeared without counsel (R. 60). Appellant was a private citizen. She had never been employed by the State of Ohio. She was not a member of any trade union using the facilities of a state or federal labor board. She was not connected with any state or federal educational institution. She was in no sense a public figure.

Questioning of appellant by counsel for the Commission began, without any preliminaries (R. 49). She was sworn and gave her name. Appellant was asked where she lived. She answered:

> "I regret that I cannot answer your question under the Fifth Amendment of the Constitution, because to do so would give your Committee an opportunity to incriminate me" (R. 49).

Appellant, asked to explain how answering this question would tend to incriminate her, stuck rigidly to the formula of words she had first used. Chairman Renner then said:

> "Mrs. Morgan, are you aware of the fact that your failure to answer questions—some questions of this Commission, might also tend to put you in an embarrassing situation?
>
> "Mrs. Morgan: I still appeal under the Fifth Amendment of the Constitution and the Bill of Rights.
>
> "Chairman Renner: I simply want to apprise you of your duties as well as your rights. Counsel may proceed" (R. 50).

Counsel then asked appellant a long series of questions, starting with her length of residence in Franklin County and her place of employment, but mainly directed to whether she was now or had ever been a member of the Communist Party and what her activities in the Communist Party had allegedly been. As to each question, appellant declined to

answer on the basis of her privilege against self-incrimination. The questions dealt with Mrs. Morgan's activities in Franklin County, starting with January 9, 1949. The Commission counsel framed his questions to indicate that he merely wanted confirmation of information already in his files. For example:

> "I will ask you, Mrs. Morgan, if it is not a fact that on May 9, 1949, at a regular meeting of the Communist Party of Franklin County you announced that you and your husband might have to leave Columbus because your salary had not been paid and your husband at that time had no job?" (Now Count 14 in the indictment, R. 53.)

After the twelfth question by counsel, and appellant's repeated reference to the Fifth Amendment privilege, Chairman Renner said:

> "Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.
>
> "Mrs. Morgan: Yes.
>
> "Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed" (R. 52).

The 47 questions were directed mainly at the subject matter allegedly discussed at meetings of the Communist Party of Franklin County (Counts 10, 15, 18 in the indictment, R. 52-53), including its financial problems (Counts 11, 13, 14, R. 52-53), its organizational problems (Counts 22, 23, 24, 27, R. 54), and the condemnation of segregation of Negro members (Count 18, R. 53).

Following her refusal to answer each question, counsel proceeded to ask the next question. No directions to answer were given.

"It was the policy of the commission not to press questions which we felt would be of an incriminating nature. For instance, whenever a witness was asked a question—, * * * —are you or have you ever been a member of the Communist Party, and if the witness refused to answer that question, we did not press it. * * * " (R. 137).[5]

At the conclusion of the questioning, the Commission read into the record a statement allegedly handed to the chairman by appellant. In the statement, appellant described herself as "an average American housewife. Daughter of a deacon, I early was baptized in a Congregational Church. I accepted its teaching of the brotherhood of man for every day in the year, not just for Sunday. * * * " She then set forth her opinions on a number of subjects then in the news, including the Commission, and explained why she would not answer its questions (R. 57-59).

After the hearing, and without any action by the Ohio General Assembly, then in recess, appellant was indicted because she did "wilfully refuse to answer" 37 questions "pertinent to the matter under inquiry" before a "select committee of the General Assembly," under Sec. 12845 Genl. Code (quoted *supra*).[6] The trial court over-ruled appellant's demurrer (R. 9-36).

On January 1, 1953, the Commission, appointed by the 99th General Assembly, filed its Report with the 100th

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[5] Testimony of Gordon Renner, *supra* note 4, in the companion case of *Raley, et al.* v. *Ohio*, No. 175 October Term 1958.

[6] The statute establishing the Un-American Activities Commission of Ohio provided a procedure for punishing refusals to answer questions before this Commission. Sec. 76-32 Genl. Code (reprinted in the Appendix). Appellant was not indicted under this Section. *Raley, et al.*, in the companion case referred to in note 5, were indicted under Sec. 76-32 Genl. Code.

General Assembly.[7] The Commission believed that it was necessary to continue to investigate "un-American activities." But it was aware of the widespread criticisms of its procedures. It therefore recommended that a special assitant attorney general be put in charge of subversive activities and that he turn over to county grand juries the evidence he collected, so that, where the evidence warranted, prosecutions could be brought for violation of the anti-sedition laws of Ohio.[8] "Undoubtedly, this will do much to satisfy those persons opposed to public hearings, because the traditional secrecy which normally surrounds grand jury proceedings will cloak these hearings as well, and only such matters as the grand juries choose to report upon will become public records."[9]

The Commission assumed that approximately nine months would elapse between the filing of its recommendations and the effective date of the new legislation. It therefore recommended that its own life be extended for one year,[10] but "Unique in the field of legislative committees, this Commission set its own death date and recommended its functions be absorbed by the Attorney General of Ohio."[11]

The 100th General Assembly did pass the legislation recommended by the Comission. The Governor (now Senator) Lausche vetoed one of the measures (perhaps because

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[7] The Report is referred to at R. 48. Report of the Un-American Activities Commission, State of Ohio, 1951-1952, dated January 1, 1953. Hereafter referred to as 1953 Report.

[8] *Ibid.*, at 36.

[9] Report of the Un-American Activities Commission, State of Ohio, 1953-1954, dated January 31, 1954, at 25. Hereafter referred to as 1954 Report.

[10] 1953 Report, at 35.

[11] 1954 Report, at 9.

of the pendency of *Pennsylvania* v. *Nelson* before this Court). The bill was passed over the veto, but by a close vote in the state Senate.[12]

At appellant's trial without a jury in November, 1953, the Chairman and one member of the Commission testified concerning its operation (R. 37-48), and the stenographer employed by the Commission read the record of appellant's appearance before the Commission (R. 49-59). The defense presented no evidence.[13]

On May 3, 1954, the trial court sustained appellant's motion for directed verdict of acquittal as to five counts in the indictment, on the grounds that the questions were not pertinent to the matter under inquiry by the Commission (Counts 2, 29 and 35, R. 2, 5), or were repetitious of other questions (Counts 7 and 36, R. 2, 5). The court found appellant guilty on the remaining 32 counts. Counsel informed the court that appellant had never been convicted of a crime in her life (R. 66). The court fined appellant $100. each on counts 1, 3, 4, 5 and 6, and suspended fines on the other counts.

Twenty-three other witnesses before the Commission were likewise found guilty of contempt of the Commission. Nineteen of these cases are now pending, thirteen before the Supreme Court of Ohio, with briefs to be filed 30 days after this Court renders its decision in the instant case.[14]

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[12] *Ibid.*, at 34-5. It is significant that this bill, when it became part of the new Ohio Revised Code, was entitled: "Offenses—against the State; against the United States."

[13] At the conclusion of the trial, appellant submitted a written Memorandum in support of the motion for directed verdict of acquittal, raising, *inter alia*, the federal constitutional questions (R. 66-79). Following this Court's decision in *Pennsylvania* v. *Nelson*, cited *supra*, appellant submitted its Reply Memorandum, making reference to that decision (R. 82-85).

[14] *State of Ohio* v. *Slagle, Perry, Bohus, Mladjan and Cooper*, on appeal from Stark County Court of Appeals; *State of Ohio* v. *Arnold, Gorday, Murphy, Thomas, Lyons, Carrigan, Glauser* and

The District Court of Appeals affirmed appellant's conviction without opinion (R. 96). The Ohio Supreme Court, after hearing argument, agreed to hear the case, and argument was had the day after this Court handed down its decisions in the *Emspak, Bart* and *Quinn* cases (cited *supra*). Reargument was ordered in the fall of 1955. The decision of the Ohio Supreme Court was handed down February 23, 1956. It was a 4-3 decision, with three dissenting opinions.

The majority agreed that appellant's reference to "the Fifth Amendment" was sufficient to claim any privilege appellant might have under Article I, Section 10 of the Ohio Constitution, and under the United States Constitution, despite her failure to refer to the provision in the Ohio Constitution (R. 112-113).

The majority opinion assumed, without discussing it, that the Fifth Amendment was inapplicable in this state hearing (R. 112), and also apparently assumed that appellant might have needed the protection against self-incrimination because of fear of prosecution under the state criminal syndicalism act, and the Smith Act (R. 117). But the court majority ruled that Sec. 60 Genl. Code clothed appellant with immunity when she appeared as a witness (R. 117), reasoning that the existence of the state immunity act made it unnecessary to notify the witness that her claim of the privilege was rejected and made it unnecessary for the Commission to direct her to answer the questions asked (R. 118-124). The majority held that appellant could not, in this state proceeding, decline to

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Furry, on appeal from Summit County Court of Appeals—pending in Ohio Supreme Court. *State of Ohio* v. *Jackson* and *Terrill*, Franklin County Court of Appeals, ##5243 and 5244—these were originally companion cases to the *Morgan* case. *State of Ohio* v. *Hupman, McGill, Thamel* and *Hupman*, Franklin County Court of Appeals, ##5159-5162.

answer questions which might tend to incriminate her in a federal proceeding (R. 116-117).

Three justices wrote dissenting opinions. Justice Stewart dissented in part, for the following reason:

> "The commission was composed in part of able and experienced lawyers, and it hired special counsel, and yet the defendants were informed by the chairman of the commission that they had a right to rely upon their constitutional privilege against self-incrimination. * * *
>
> "Even if the chairman was mistaken as to the law and the effect of the Ohio Immunity Statute, and Mrs. Morgan was likewise mistaken, how can it be said that she was in contempt of the commission in strictly following its direction and admonition? The point is further emphasized by the fact that in every instance when she refused to answer a question, claiming protection against self-incrimination, she was never directed to answer the question but the interrogator immediately proceeded with another inquiry" (R. 137).

Justice Hart dissented on the following ground:

> "In the instant case, where the claimed subversive acts of the defendants as against the state government may also be the basis of a prosecution by the federal government for subversive acts against it or the states, I am of the opinion that under the protection of the Fifth Amendment these defendants could lawfully refuse to answer incriminating questions before the legislative committees, notwithstanding the purported protection of the state immunity statute" (R. 135-6).

He quoted this Court's opinion in *Counselman* v. *Hitchcock*, 142 U.S. 547, in support of his position:

> "'We are clearly of opinion that *no statute which leaves the party or witness subject to prosecution after*

*he answers the criminating questions put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. * * * In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.' * * * "* (R. 133-4). (Emphasis in the original.)

Justice Taft dissented on a jurisdictional ground:

"My conclusion therefore is that the General Assembly clearly expressed an intention that the Un-American Activities Commission should be regarded as something other than a 'committee of the General Assembly.' It follows that Section 12845, General Code, did not authorize the indictment in the *Morgan case.* * * * Since * * * the General Assembly clearly expressed an intention that the Un-American Activities Commission should be regarded as something other than such a 'committee', the premise relied upon by the majority will not support their decision. There is no statutory grant of immunity with respect to testimony before the Un-American Activities Commission" (R. 141).

On appeal, this Court, on June 24, 1957, in a *per curiam* opinion, vacated the judgment of the Ohio Supreme Court and remanded to the Supreme Court of Ohio "for consideration in the light of *Sweezy* v. *New Hampshire by Wyman, attorney general,* * * * and *Watkins* v. *United States.* * * *" (R. 147). On briefs and oral argument, the Ohio Supreme Court, on February 11, 1958, decided that it did "not find enough similarity with the *Sweezy* and *Watkins* cases to warrant a change in its former judgment." The *per curiam* opinion was concurred in by four Justices. Justice Taft

renewed his dissent (R. 149).[15] Appellant's application for rehearing was denied. On October 20, 1958, this Court noted probable jurisdiction and postponed further consideration of the question of jurisdiction to the hearing on the merits.

Summary of Argument

I.

This case is similar to *Watkins* v. *United States* and *Sweezy* v. *New Hampshire*, as this Court indicated by its vacation of the verdict and remand to the Ohio Supreme Court for reconsideration in the light of the decisions in those cases. The act establishing the Un-American Activities Commission of Ohio is repugnant to the United States Constitution in several respects.

It is legislation in the field of "sedition," a field in which Congressional action has superseded state action, and it touches upon foreign affairs, a field in which federal power is exclusive and supreme.

It provides for investigations into the political beliefs, activities, and associations of persons in private life which can serve no valid legislative purpose, and which necessarily abridge the witnesses' First Amendment rights.

It requires the "disclosure" of persons and groups holding dissident political beliefs, with the threat of prosecution by the state or federal governments under sedition laws, but without a fair procedure for determining who falls into the category of "un-American," and with no valid

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[15] Justice Hart, who dissented from the 1956 decision, was no longer on the bench. Justice Stewart, who dissented, in part, from the 1956 decision, and the new Justice Herbert, did not participate in the 1958 decision.

legislative purpose, and therefore constitutes a denial of due process under the Fourteenth Amendment.

In addition, the language of the statute is too vague to meet due process standards, as was the similar language in *Sweezy* and *Watkins*.

Lastly, the vague grant of authority to the Commission gives no clear indication of the Assembly's interest in the information obtained at the hearings, and constitutes a denial of due process because it permits a complete separation of the Assembly's responsibility in this field from the operation of the Commission.

II.

The Ohio immunity act, as interpreted by the Ohio Supreme Court in this case, is repugnant to the United States Constitution because it requires a witness to answer questions which might incriminate him, without affording him protection sufficient to eliminate the threat of prosecution. When immunity is granted, a witness could not be prosecuted by the state. But he could still be prosecuted by the federal government. The threat of federal prosecution in this field of sedition is real and imminent. This is a field in which state and federal governments have been working together, and concurrent prosecutions by state and federal officials against the same individuals have occurred. This threat is made explicit in the statute establishing the said Commission, which requires that state officials cooperate with federal officials.

In addition, this immunity act, as interpreted and applied by the Ohio Supreme Court, permits convictions for contempt in the absence of directions to answer, and without knowledge on the part of the witness that the immunity act offers any protection against prosecution. This clearly denies due process of law.

The immunity act applies only to "committees" of the Ohio General Assembly. The Un-American Activities Commission in this case is not such a committee, and the act therefore does not apply to it.

III.

Appellant was denied due process of law under the Fourteenth Amendment by her conviction for wilful refusal to answer questions pertinent to the matter under inquiry, because her actions were not wilful refusals to answer, but proper claims of the privilege against self-incrimination as to questions which had a tendency to incriminate her in state and federal jurisdictions. The questioning body acquiesced in her claims of the privilege. This was indicated by the failure to direct the witness to answer the questions, after her original refusal. It was indicated even more sharply by the advice given to her by the chairman of the Commission, an attorney, who advised her that she was permitted, under the Fifth Amendment, to refuse to answer incriminating questions.

The problems of pertinency raised in the *Watkins* and *Sweezy* cases are inherent in any investigations in the field of "un-American activities," and arose in the instant case because the witness was not informed of the purpose for which the hearing was called. Nor was there any guide by which she could determine, for herself, during the hearing, whether the specific questions asked were pertinent to any valid legislative purpose, since the statutory language is as vague as in *Watkins* and *Sweezy*. In addition to the questions which only remotely touched on any topic, past or present, which might be deemed "un-American," several of the counts against appellant related to questions which were purely preliminary. Conviction under these facts constituted a denial of due process.

Basically, appellant was asked only one question, not 32, and that related to her political activities and beliefs and associations, questions outside the jurisdiction of the State of Ohio, and protected by First and Fourteenth Amendments.

ARGUMENT

I.

The Statute Establishing the Commission Is Repugnant to the United States Constitution.

A. *The State has no power to act in national and international affairs, or in the field of subversion, which Congress has fully occupied.*

Appellant was subpoenaed pursuant to a statute establishing the Un-American Activities Commission whose stated purposes included, *inter alia*: investigations of persons and groups "dominated by or giving allegiance to *a foreign power*" or whose activities might adversely affect Ohio's contribution to *"the national defense,* * * * the functioning of any agency of the * * * *national government* or the industrial potential of this state"; to assist in the revision of *federal* sedition statutes; to "maintain liaison with any agency of the *federal* * * * *government*[s] *in devising and promoting means of disclosing* those persons and groups who seek to alter or destroy *the government* of this state or *of the United States* by force, violence, intimidation, sabotage or threats of the same." (Emphasis supplied.) Sec. 76-31 (1)(a), (b), (c) Genl. Code.

Under this statute appellant was asked more than forty questions. The questions were not limited to matters of concern to the State of Ohio. Several questions related to appellant's alleged signing of a petition to the United

Nations (Counts 31-35, R. 5). The last question referred to appellant's activities in Illinois before moving to Ohio (Count 37, R. 5). The questions concerning the Communist Party referred to it as a national organization (particularly Counts 11, 18 and 27, R. 3, 4, 5). No questions were asked about the purposes or activities of the *Ohio* Communist Party *in Ohio*, as distinct from its role as part of the national Communist Party.[16]

This Court has recognized that, in the twentieth century, seditious activity is a national problem, and is not directed against any single state. *Pennsylvania* v. *Nelson*, cited *supra*. This statute makes this fact explicit. The two annual Reports of the said Commission, of which this Court is asked to take judicial notice, likewise consider "un-American activities" on a national scale, with no references to activity on a purely state level.[17]

The Constitution of the United States provides that the federal government shall have exclusive jurisdiction over the conduct of foreign affairs (Art. I, Secs. 8, 10; Art. II, Sec. 2) and over the protection of the federal government from invasions and insurrections (Art. I, Sec. 8). The statute which established the Ohio Commission gave it the power and duty to investigate activities in these areas. Such provisions clearly contravene the federal Constitution.

This Court has held, in addition, "that Congress has intended to occupy the field of sedition. Taken as a whole, [the acts of Congress] * * * evince a Congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore a state sedi-

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[16] Although appellant raised the supremacy and supercession questions in its Reply Memorandum (R. 82-85), they were not discussed by the Ohio Supreme Court in its opinion.

[17] See 1953 Report, at 11-33; 1954 Report, at 9-30.

tion statute is superseded regardless of whether it purports to supplement the federal law." *Pennsylvania* v. *Nelson*, 350 U.S. 497, at 504.

The legislature of Ohio therefore could not pass a valid state sedition statute.

The act establishing the Un-American Activities Commission was invalid for two reasons:

First, it operated as a state sedition statute. The method of enforcing this statute was, through subpoenaing witnesses to appear at public hearings, asking questions concerning their own and other people's political activities and actions which might be "subversive" in the eyes of the Commission, disclosing the names of the witnesses to the public, and to other state and federal agencies. (See discussion on "disclosing" *infra*, at point I.c.)

Second, the act required the Commission to seek information which would be helpful in drafting additional statutes in the field of sedition for presentation to the Ohio General Assembly for passage. But, as this Court has explained, " • • • these [investigating committees] are restricted to the missions delegated to them, i.e., to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere." *Watkins* v. *United States*, 354 U.S., at 205-6. Since sedition does not fall within the state legislative sphere, this statutory grant of authority to the Commission was also invalid.

When William B. Saxbe, co-author of legislation establishing the predecessor of the Commission, became Attorney General of Ohio in 1957, he recognized that this Court's decision in the *Nelson* case "said that Pennsylvania did not have the authority to enter the field of investigation of Un-American Activities, even though the statute had not said so, Congress had pre-empted the field. That ended the

program in Pennsylvania, Ohio and a great many other states." [18]

Since the Assembly could not pass any valid statutes in this field already occupied by Congress, and limited to the federal government by the federal Constitution, the hearings had no valid legislative purpose and the statute authorizing such hearings was repugnant to the federal Constitution.

B. *The Commission is given statutory authority to investigate the political beliefs, associations and activities of private citizens, thus abridging their constitutionally protected freedoms.*

For lawyers accustomed to qualifying clauses, it is refreshing occasionally to read the First Amendment in the naked form in which it was written: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Since this Court's wise and necessary decision that the First Amendment guarantee of rights is implicit in the Fourteenth Amendment as against state action, *Palko* v. *Connecticut*, 302 U.S. 319, at 325, citizens of state and nation have been encouraged to practice these freedoms. The Ohio Constitution also contains strong provisions concerning freedom of speech, press and assembly. (See Ohio Constitution, Article I, Sections 1, 2, 3 and 11.)

When these freedoms are consistently circumscribed by investigations and threats of jail for contempt, the need

[18] William B. Saxbe, Address to the Columbus and Akron Bar Associations, 47 The Ohio Bar 1041, 1043, December 9, 1957.

for the freedoms does not diminish and the fight to restore and maintain the First Amendment does not cease. But few dare exercise their rights, particularly the right to think thoughts which may prove dangerous to the existing order of things—whether in science or psychology or political theory. Yet the future of our society depends upon these new thoughts. Endless newspaper headlines in 1952 in Columbus, Ohio—a college town—concerning the arrest and trial and conviction of an ordinary housewife for contempt of the Legislature for refusing to answer questions about her political beliefs and affiliations have an effect, not only upon appellant, but upon the political and intellectual climate of the capital of Ohio.

It is to be regretted that the Supreme Court of Ohio, unlike the Supreme Court of New Hampshire in *Sweezy*, did not consider the First Amendment problems raised by appellant in the instant case (R. 80-82). But there can be no doubt that here, as in *Sweezy*, the rights of all witnesses called before this Commission—to think, to speak or be silent, their right to associate with others—were abridged through this investigation. "Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters. These are rights which are safeguarded by the Bill of Rights and the Fourteenth Amendment. We believe that there unquestionably was an invasion of petitioner's liberties in the area of academic freedom and political expression—areas in which government should be extremely reticent to tread." *Sweezy* v. *New Hampshire*, 354 U.S., at 250.

This Court has more recently described the effect of a state order requiring the disclosure of the names of members of an organization:

> "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy

> may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. * * * " *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449, at 460-62.

This Court is aware of the effect upon a person's ability to earn a living, his family, his status in the community merely from the receipt of a subpoena to appear before a committee investigating "un-American activities." *Watkins* v. *United States,* 354 U.S., at 197. In *Speiser* v. *Randall,* this Court found that "the denial of a tax exemption for engaging in certain speech necessarily will have the effect of coercing the claimants to refrain from the proscribed speech." 357 U.S. 513, at 519.

A statute which has as its purpose the summoning of witnesses to appear, against their will, to be questioned about their political beliefs, associations and affiliations by an agency of the state with power to jail them for contempt is clearly repugnant to the First and Fourteenth Amendments.

In addition, this statute on its face would cause law-abiding citizens of Ohio to question their right to believe in various types of governmental reform, and their right to advocate such reforms. The section requiring the Commission to investigate all persons and organizations "whose activities might adversely affect * * * the industrial potential of the state" certainly contains a threat to the free

exercise of constitutionally-protected rights by trade unions in every industry in the State of Ohio.[19]

This Court held, in *Watkins*:

> "* * * Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless, an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by law-making." 354 U.S., at 197.

But here there is a statute to be reviewed. The statute establishing the Commission is itself repugnant to the First and Fourteenth Amendments.

The investigations conducted under the statute constituted additional infringements of these rights. Of the 47 questions asked of appellant, none related in any way to appellant's ideas or objectives as an individual, or to the philosophy or objectives of the Communist Party (aside from the customary organizational need to raise funds). None of the questions mentioned anything remotely related to "the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means." None of the questions mentioned or assumed that appellant or the Communist Party were dominated by or gave allegiance to a foreign power. None of the questions even remotely touched on any activities which might adversely affect the contribution of Ohio to the national defense or the security of Ohio or the functioning of any agency of

[19] See count 29 herein, referring to appellant's picketing during a strike.

the state or national government, or the industrial potential of the state. Nor did any of the questions relate to the operation and effect of the laws of Ohio or any other state, or the United States, which purport to outlaw and control the activities mentioned above, in the language of the statute.

On the other hand, every question was designed to "disclose" to the public the past and present political affiliations of appellant, and the names of additional persons with those affiliations.

Even if appellant had been willing to abandon her right to privacy of political opinion, she could not have conducted a "First Amendment discussion" of her political theories and objectives with the members of the Commission. A Commission hearing, with counsel asking Yes and No questions, is no free market place of ideas where a reasoned give and take can occur, out of which new approaches may emerge. The purpose of the hearing was compulsory disclosure of political beliefs, and this has always been the enemy of freedom of thought.

One other First Amendment problem must be mentioned. The concept of "balancing contending principles" where First Amendment questions arise cannot be found in the wording of the Amendment or in the correspondence of its framers. But Ohio, like New Hampshire, apparently felt the need to be informed on the "elemental subject of self-preservation." This Court, balancing this State need against the rights of a witness, stated in 1957 that it did "not now conceive of any circumstances wherein a state interest would justify infringement of rights in these fields," i.e., the fields of freedom of association and thought, including unorthodox and dissenting thought. *Sweezy v. New Hampshire,* 354 U.S., at 251. Appellant believes that the same circumstances existed in 1952 at the time of this

hearing in Ohio and that the State has made no showing to the contrary.

The threat to the security of Ohio shown by the questions asked of this appellant is as remote, shadowy and meager as that shown in *Sweezy*. No such threat can be demonstrated by questions about appellant's signing a petition to the United Nations (Counts 31-34), or questions about the activities of the Communist Party of Franklin County, many of which indicate the weakness of the said Party (see Counts 13, 14, 18, 22, 27), and all of which sought merely to corroborate information already in the possession of the questioning body. Nor did the State show how its concern for self-preservation was advanced by abridging the political privacy of appellant by subpoenaing her and compelling her either to answer the questions asked or face a contempt citation.

For all of these First Amendment reasons, the statute establishing the Commission is repugnant to the United States Constitution.

C. *The statutory requirement that the Commission "disclose" all persons and groups having certain objectives serves no valid legislative purpose and pins a "badge of disloyalty" on individuals without due process of law.*

The statute establishing the Commission requires it to maintain a liaison with agencies of the federal, state, and local governments "in devising and promoting means of *disclosing* those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same. • • •" Sec. 76-31(2), Genl. Code.

Nine months after conducting the hearing in which appellant appeared as a witness, the Commission filed its

first report with the General Assembly, in which it recommended that further investigation of "subversive activities" be conducted by an assistant attorney general "with hearings before the county grand juries instead of before a commission. Undoubtedly, this will do much to satisfy those persons opposed to public hearings, because the traditional secrecy which normally surrounds grand jury proceedings will cloak these hearings as well, and only such matters as the grand juries choose to report upon will become public records. Primarily, such hearings will look toward indictments for violations of the criminal sections of this act." [20] "Unique in the field of legislative committees, this Commission set its own death date and recommended its functions be absorbed by the Attorney General of Ohio." [21]

It is commendable that the Commission itself became sensitive to the violations of due process inherent in its procedures. Nor could the "disclosure" of persons serve a valid legislative purpose. In performing its function of initiating bills, and amending and repealing statutes, a legislature may need the information gained through legislative committee hearings. But a legislature does not need and cannot use information about the beliefs and activities of specific individuals while the constitutional prohibition against bills of attainder stands.

Clearly a legislative body has no power to disclose the names of persons as being "subversive" or "disloyal." As this Court stated recently: "We have no doubt that there is no congressional power to expose for the sake of exposure." There is "no general power to expose where the predominant result can only be an invasion of the private

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[20] 1954 Report, at 25.

[21] *Ibid.*, at 9.

rights of individuals." *Watkins* v. *United States*, 354 U.S., at 200.

Under the Constitution and the Anglo-American concept of due process of law, an individual cannot be found guilty of crime unless certain procedures are followed. No agency of government can "disclose" that an individual has committed a crime until there has been an indictment or information, arraignment, trial and verdict (with opportunity for appeal). And each of these steps in the criminal procedure must be taken according to certain rules which protect the individual from the likelihood of conviction if, in fact, he is innocent.

It is obvious that a hearing before a legislative fact finding committee does not provide the procedural safeguards surrounding a defendant in a criminal case. There is no clear and concise statement of the charges against the witness in advance of the hearing; there are no rules of evidence in the hearing, such as the right to effective advice of counsel of the type required in criminal cases, the right to confrontation and cross-examination of opposing witnesses. Nor is there a right to be heard by a jury of one's peers, or for a determination by a person sitting as an objective, disinterested judge. There is no effective appeal from the "verdict" of the legislative Commission. There is, instead, "conviction" by questioning, and immediate disclosure of "guilt."

This Court has held that all hearings in the field of "un-American activities" restrain speech. The comments in *Speiser* v. *Randall* are therefore applicable here:

> "To experienced lawyers it is commonplace that the outcome of a lawsuit—and hence the vindication of legal rights—depends more often on how the factfinder appraises the facts than on a disputed construction of

a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. And the more important the rights at stake the more important must be the procedural safeguards surrounding those rights. * * * When the State undertakes to restrain unlawful advocacy it must provide procedures which are adequate to safeguard against infringement of constitutionally protected rights—rights which we value most highly and which are essential to the workings of a free society. Moreover, since only considerations of the greatest urgency can justify restrictions on speech, and since the validity of a restraint on speech in each case depends on careful analysis of the particular circumstances, the procedures by which the facts of the case are adjudicated are of special importance and the validity of the restraint may turn on the safeguards which they afford. * * * " 357 U.S., at 520.

The Ohio statute provides no procedural safeguards for the witness appearing before the Commission. The majority opinion of the Ohio Supreme Court did not touch on appellant's contention (R. 102) that the Commission acted without authority as a grand jury or police force, seeking to discover crime and criminals, without rules to insure due process of law, and with only the vaguest and broadest conception of its quarry, as indicated by the testimony of a Commission member:

Mr. Devine: "Well, Judge, the Commission was organized for * * * three purposes, * * * One, to investigate in the State of Ohio to determine whether or not there was Communism; second, if we did find that it did,

exist, whether or not it constituted a danger; and third, if we did find that it existed and constituted a danger, to make recommendations to the next General Assembly legislation to cope with any situation that we found. * * * " (R. 48).

The statute was invalid for the additional reason that it did not require "the necessary element of guilty knowledge" by the witness before he was subpoenaed and questioned and "disclosed" as "un-American." *Wieman* v. *Updegraf*, 344 U.S. 183.

It is of interest that the Attorney General of Ohio read with care, and with approval, this Court's decisions at the end of the 1956 October Term, and concluded:

" * * * Notice that the error which has been the grounds for reversal in nearly all of [the cases discussed, including *Watkins, Sweezy, Yates, Jencks, et al.*] has been procedural error—either in the apprehension or trial of the offenders. The court is saying now that the threat of Communism has abated and that the doctrine of clear and present danger will not be heard in court. If you are going to catch a Communist, you must do it by the rules. Whether by means of a Congressional investigation, Attorney General's action, or however, it's no longer on a catch as catch can basis—but must be done strictly according to law and procedure. * * *

"There is little logic in depriving liberty out of alleged necessity to prevent a similar deprivation later on. I think the interest of the court is to follow what the people want and expect today, namely, protection and preservation of civil liberties. * * * " William B. Saxbe, then Attorney General of Ohio, 47 Ohio Bar, at 1046-7.

The language of the statute establishing the Un-American Activities Commission of Ohio makes necessary a finding that it is repugnant to the federal Constitution.

D. *The statute is invalid because of its vague language.*

The authority given to the Ohio Commission was "broadly drafted and loosely worded," it provided a "sweeping mandate" to the Commission without properly stating the limits on the scope of the Commission's inquiry. The vice of vagueness found in the mandates of the House Un-American Activities Committee, in *Watkins*, and of the Attorney General of New Hampshire, in *Sweezy*, are equally present here.

The Ohio Commission was directed to investigate "*all* facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective *or may be suspected of having* as their objective the overthrow *or reform* of our constitutional governments by fraud, force, violence, *or other unlawful means;* all facts concerning persons, groups and organizations, known to be *or suspected of being dominated by* or *giving allegiance to* a foreign power or whose activities might *adversely affect* the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government or *the industrial potential of this state;* * * * " Sec. 76-31 Genl. Code.

Counsel could not define the italicized words and phrases, nor could appellant. Neither the legislature of Ohio nor the Ohio Commission nor the Ohio Supreme Court has defined these words and phrases with the degree of explicitness needed to meet due process requirements in a statute providing a criminal penalty for failure to answer questions.

Further, the statute contains no differentiation between "knowing" and "innocent" association or activity. *Wieman* v. *Updegraf, supra.*

E. *The vague statutory grant of authority to the Commission made it impossible for a reviewing court to judge whether the Commission had ranged outside the area committed to it by its parent Assembly, and insulated the Assembly from the witnesses subjected to the sanction of compulsory process.*

This Court, in its decisions in *Sweezy* and *Watkins*, considered at some length the proper wording of a grant of authority to a state or federal legislative investigating body, and the proper scope of its inquiry. The Court also considered the separation of the authority of the legislature to obtain information from the actual workings of the creature established by the legislature for this purpose. *Sweezy* v. *New Hampshire*, 354 U.S., at 245-7; *Watkins* v. *United States*, 354 U.S., at 201, 205-6.

The grant of authority to the Ohio Commission contained all of the evils mentioned in these two opinions, as a reading of Sec. 76-31 Genl. Code indicates.

In addition, the Ohio Commission did not commence its work until after the *sine die* adjournment of the General Assembly. And a witness who declined to answer questions before the Commission could be indicted for contempt without any action by the Assembly, or by a reviewing magistrate. In Congress, a contempt citation must be voted by the investigating committee, and approved by the entire House before an indictment can be drawn. (See *Watkins* v. *United States*, cited *supra.*) In New Hampshire, the witness who refused to answer questions asked by the attorney general acting as a legislative investigating committee was called before a judge, who decided whether such

questions must be answered. The "committee" did not make the final determination that a contempt citation should be drawn. (See *Sweezy* v. *New Hampshire,* cited *supra.*)

Appellant contended before the Ohio Supreme Court, on remand from this Court, that the legislature of Ohio, like the legislature of New Hampshire in the *Sweezy* case, had not made known the nature of the data it desired, but instead had insulated itself from those witnesses whose rights might be vitally affected by the investigation. The legislature in effect told the Ohio Commission to screen the citizenry of Ohio to bring to light anyone who fitted into the expansive statutory definitions. *Sweezy* v. *New Hampshire, supra,* at 253; *Watkins* v. *United States, supra,* at 204-5.

Appellant also contended that the Ohio General Assembly had delegated to the Commission the task of separating the classes of information deemed desirable, in the light of the legislature's object, from the information it could not validly acquire without infringement of the constitutional rights of the witnesses. The Ohio Supreme Court did not rule on this contention, or on appellant's claim that the state courts as a result could not know with any assurance that the questions appellant refused to answer fell into a category upon which the legislature wanted to be informed. *Sweezy* v. *New Hampshire, supra,* at 254.

But some guidance can be given to this reviewing Court, which was not available in the *Watkins* or *Sweezy* cases, because the Assembly did not repeatedly renew the life of the Commission it had established in 1951. On the contrary, the Assembly accepted the recommendation of the Commission that: 1) no further legislative investigations be conducted in the field of "un-American activities"; 2) no further hearings be conducted in order to "disclose" persons; 3) all further investigations in this field be held before the county grand juries where the witnesses would be

cloaked with the "traditional secrecy," and 4) such hearings will "primarily" "look toward indictments for violations of the criminal" state sedition law.[22]

Not only the members of the Commission and the Assembly expressed the need for a different approach in this field, but later the Attorney General of Ohio showed the necessary concern for procedural due process in the investigation of "un-Americans," cited *supra*, at point I.c. And, as noted above, after the *Nelson* decision, even the new statutes giving power to the assistant attorney general to investigate in this area fell into disuse.

For all of these reasons, the statute establishing the Commission is repugnant to the federal Constitution.

II.

The Immunity Act, as Interpreted by the Supreme Court of Ohio, Is Repugnant to the United States Constitution.

A. *The act displaces the right of a witness to refuse to answer on the ground of self-incrimination when the answers could become the basis for prosecution in the federal jurisdiction, which is coterminous with state jurisdiction.*

This case involves a witness before a state Commission investigating in the field of "un-American activities" who, appearing without counsel, claimed the privilege against self-incrimination contained in the Fifth Amendment to the federal Constitution in declining to answer certain questions, for fear of prosecution under the state syndicalist act[23] and the federal Smith and McCarran Acts,[24] no men-

[22] *Ibid.*, at 25.

[23] Sec. 13421-23 to -26, Ohio Gen. Code, now Sec. 2923.12-.14, Ohio Rev. Code.

[24] 18 U.S.C. 2385; 50 U.S.C. 783.

tion of a state immunity statute having been made. The Commission was given the "power and duty * * * (2) To maintain a liaison with any agency of the federal * * * government[s] in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same." Sec. 76-31 Genl. Code.

The majority of the Ohio Supreme Court held that appellant's mention of the "Fifth Amendment" was sufficient to invoke her privilege against self-incrimination under the Ohio Constitution, Article I, Section 10, but that she had no privilege under the Fifth Amendment, since that Amendment applies solely to activities of the federal government (R. 117-126). Justice Hart wrote a strong dissent (R. 131-6). The Court did not consider the statutory requirement of state cooperation with federal agencies in this field, which was urged by appellant as a significant factor in this case (R. 102, point (d)).

The Ohio immunity act, Sec. 60 Genl. Code, is a broad statute, within the meaning of the decision in *Counselman* v. *Hitchcock*, 142 U.S. 547. It provides that the "testimony * * * shall not be used as evidence in a criminal proceeding against him, nor shall a person be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he so testifies, * * *". The language is almost identical with the language in the federal Immunity Act of 1954 passed upon by this Court in *Ullmann* v. *United States*, 350 U.S. 422, and in the New York immunity act passed upon by this Court in *Knapp* v. *Schweitzer*, 357 U.S. 371, except that the latter use the word "any" each time the Ohio act uses the word "a."

This Court has interpreted this section of the federal act as providing immunity from all prosecutions, federal or state. *Ullmann* v. *United States*, cited *supra*, at 436.

It may be helpful at this juncture to distinguish between the facts in the recently-decided *Knapp* case and the facts now before the Court. Knapp was subpoenaed to appear before a New York State grand jury investigating the "conventional state crimes" of corruption and misconduct under state law. He was specifically granted immunity from state prosecution when he refused to answer on the ground of self-incrimination. On application of the grand jury foreman, the court directed Knapp to answer the questions. After further refusal, the court adjudged petitioner in contempt, rejecting his claim of fear of federal prosecution based on a statement of the United States Attorney that he would "cooperate" with the state's attorney in this field.

Appellant was subpoenaed to appear before an Ohio Commission investigating in the area of "subversion," an area fully occupied by Congress in which the state has no power to act. This is also an area involving rights guaranteed by the First and Fourteenth Amendments, the "essential rights" referred to by James Madison (as quoted in *Knapp*, 357 U.S., at 377), the "rights of conscience." It is not an area of "traditional power to investigate in aid of prosecuting conventional state crimes, some facts of which may be entangled in a federal offense," *Knapp* v. *Schweitzer*, at 374-5, but quite the reverse. The appellant was not granted immunity from state prosecution; the immunity act was never mentioned during the hearing. The appellant was not directed to answer any question she refused to answer. The Chairman of the Commission acquiesced in her claim of privilege against self-incrimination under the Fifth Amendment (R. 52). The act under which the Commission operated *required* close cooperation with federal agencies, and, in fact, concurrent state and federal prosecutions against "subversives" were then in progress in a neighboring state. *Pennsylvania* v. *Nelson*,

350 U.S. 497; *Mesarosh* v. *United States*, 352 U.S. 1. A federal Smith Act prosecution was instituted in Cleveland, Ohio shortly after this hearing. (See note 3, *supra*.)

This recitation of the differences in the facts in *Knapp* and *Morgan* indicates that the decision in *Knapp* cannot fit the instant case.

Chief Justice Warren, in his concurring opinion in *Regan* v. *People of New York*, 349 U.S. 58, pointed out that:

> "This Court has never held that a State, in the absence of an adequate immunity statute, can punish a witness for contempt for refusing to answer self-incriminatory questions. A case involving such facts has never been presented here.[1]"

This case presents this issue. Assuming appellant was granted complete immunity from state prosecution, she was left subject to prosecution by the federal government.

Justice Hart of the Ohio Supreme Court dissented from the judgment of the court for this reason, citing this Court's opinion in *Counselman* v. *Hitchcock* that:

> "* * * no statute which leaves the party or witness subject to prosecution after he answers the criminating questions put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. * * * In view of the constitutional pro-

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NOTE 1. "Compare *Twining* v. *State of New Jersey*, 211 U.S. 78 (jury instruction authorizing the jury in a criminal case to draw an unfavorable inference from the accused's failure to take the stand); *Adamson* v. *People of State of California*, 322 U.S. 46 (state law permitting prosecutor and trial judge to comment on the accused's failure to take the stand); *Snyder* v. *Commonwealth of Massachusetts*, 291 U.S. 97, 105 (denial of permission to the accused to accompany jury on visit to scene of crime); *Palko* v. *Connecticut*, 302 U.S. 319 (state statute allowing appeal by State in criminal case)" (at 65).

vision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates." 142 U.S. 547, at R. 133.

And this Court recently said that it is "not unmindful of the risk of compounding punishments which would be created by finding concurrent state power" over seditious activity. "Without compelling indication to the contrary, we will not assume that Congress intended to permit the possibility of double punishment." *Pennsylvania* v. *Nelson*, cited *supra*, at 509-510.

While cases can be cited for the proposition that one jurisdiction need not protect against the threat of prosecution in another jurisdiction when it compels a witness to testify in a proceeding, it is significant that the facts in each case clearly indicate that there was, in fact, no substantial threat of prosecution in any other jurisdiction:

Jack v. *Kansas*, 199 U.S. 372;
Brown v. *Walker*, 161 U.S. 591, 606-608;
United States v. *Murdock*, 284 U.S. 141;
Hale v. *Henkel*, 201 U.S. 43;
Knapp v. *Schweitzer*, cited *supra*.

And where such a threat did exist, "one way or another" the witness was protected from incriminating himself in the second jurisdiction:

Ballman v. *Fagin*, 200 U.S. 186;
United States v. *Saline Bank*, 1 Peters 100;
In re Kantor, et al., 117 F. 356;
Marcello v. *United States*, 196 F.2d 437.

Even Wigmore, who strongly urged the view that the privilege against self-incrimination should be narrowly con-

strued, and who favored the two-sovereignties rule, distinguished three types of cases and said of the first category:

> "(1) The act may be criminal in another court or system of law in the same jurisdiction of legislative sovereignty; here the privilege applies." He cited, in a note: "1749 *E. India Co.* v. *Campbell*, 1 Ves. Sr. 246 (discovery of facts rendering a defendant punishable in the British criminal jurisdiction in Calcutta, though not in England, held not compellable); 1750 *Brownsword* v. *Edwards*, 2 Ves. Sr. 243 (discovery of an incestuous marriage, refused, incest being punishable in the ecclesiastical Court; 'the general rule is that no one is bound to answer so as to subject himself to punishment, whether (or not) that punishment arises by the ecclesiastical law of the land')." Wigmore, Evidence, Vol. 8, page 340, Sec. 2258.

And see J. A. C. Grant, Federalism and Self-Incrimination, Parts I and II, IV U.C.L.A. Law Review No. 4 (June 1957), V U.C.L.A. Law Review No. 1 (January 1958); The Use of State-Compelled, Self-Incriminating Testimony in Federal Court, 68 Yale Law Journal 322-334 (1958).

Counsel know of no case in which a witness in one jurisdiction who actually faced a substantial threat of prosecution in a second jurisdiction was required to answer questions following a claim of the privilege against self-incrimination, or convicted of contempt for refusal to so answer. In view of the lack of any state jurisdiction over the crime of sedition, it can be argued in this instance that state officers were in fact acting for the federal government, thus bringing into play in this state proceeding appellant's privilege against self-incrimination under the Fifth Amendment.

> "* * * the Federal Government may not take advantage of this recognition of the States' autonomy in order to

evade the Bill of Rights. * * * If a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. * * * " *Knapp* v. *Schweitzer*, cited *supra*, 357 U.S., at 380.

Since this Court has held many times that a State may not convict a person on testimony it coerced from him (*Leyra* v. *Denno*, 347 U.S. 556; *Ashcraft* v. *Tennessee*, 322 U.S. 143), neither may a State force a person to convict himself, or incriminate himself, in a federal proceeding on the basis of testimony coerced from him. Appellant's privilege against self-incrimination as to federal prosecutions justified her claim of the Fifth Amendment privilege, which relates to just such federal prosecutions, even though this claim happened to be made in a state proceeding. Appellant's conviction for contempt by a state court under these facts was barred by the supremacy clause of the United States Constitution, and also by the privileges and immunities clause of the Fourteenth Amendment.

In Justice Holmes' words, "one way or another", the Ohio immunity act, as interpreted by the Ohio Supreme Court in the instant case, must be held repugnant to the federal Constitution because the privilege against self-incrimination ceases only when "immunity displaces the danger", *Ullmann* v. *United States*, cited *supra*, at 507, and the Ohio immunity act cannot displace the imminent danger of federal prosecution in this case.

Although this state immunity act has long been on the statute books, this is the first case in which the provisions were construed by the Ohio Supreme Court (R. 114). And this Court has never passed on the validity of a contempt conviction of one appearing as a witness before a legislative committee which claimed the power to grant immunity. In addition, the "double sovereignties" problem, as it re-

lates to legislative committees, has not been ruled on by this Court.

The reason that legislative immunity statutes have not been tested previously apparently is that legislative committees seldom grant immunity. There is no indication, in the instant case, that the Ohio Commission would have granted appellant immunity if the members of the Commission had known of the existence of the Ohio immunity act (R. 137). It is clear that the members of the Commission either did not know of the existence of the immunity act, or assumed that it would not operate to supplant the right of a witness to refuse to answer questions which might incriminate her in the *federal* jurisdiction (R. 52).

The cases cited above involve grand jury investigations into crime and hearings before administrative agencies. There is a fundamental distinction between such proceedings and hearings before a legislative investigating committee, involved in the instant case. A grand jury exists to discover the commission of crimes. It functions as part of the judicial system and is an agency in the administration of justice. A legislative investigating committee has no authority to act as a grand jury, or to discover the commission of crimes. Its only authority is to investigate for the purpose of proposing legislation.

The theory behind all immunity acts is that the questioning body has the authority to compel testimony even if it may incriminate the witness, and has the authority to grant a pardon in advance, or otherwise protect the witness from subsequent prosecution as to matters touched in his compelled testimony. Does a non-law enforcement agency have the authority to grant a pardon in advance, or otherwise protect the witness from subsequent prosecutions as to matters testified to under compulsion? *Brown* v. *Walker*, 161 U.S. 591, Field, J., dissenting, at 638. And, unless some

procedure were established to insure that a record was made of the testimony of every witness before a state legislative committee, and of every grant of immunity to a witness, denials of due process would necessarily occur.

B. *The immunity act, as interpreted and applied, permits a witness to be convicted of contempt for refusal to answer questions which he was not directed to answer, and without instructing him that he is clothed with immunity from state prosecution.*

Counsel for appellant know of no previous case before a state or federal legislative investigating body in which a conviction for contempt was sustained in the absence of a direction from a member of the investigating body to the witness to answer the question following the witness' refusal to answer.

In the *Emspak*, *Bart* and *Quinn* cases, this Court explained at some length the nature of a direction to answer, that such a direction is "supported by long-standing tradition", "has been uniformly recognized in the procedure of both state and federal courts", and is one of the "minimal procedural standards" without which "there is lacking the element of deliberateness necessary for a conviction under Sec. 192 for a refusal to answer."

> *Quinn* v. *United States*, 349 U.S. 155, at 167-8;
> *Emspak* v. *United States*, 349 U.S. 190, at 202;
> *Bart* v. *United States*, 349 U.S. 219, at 223.

This Court cited several early cases of contempt of state legislative bodies in which the witness, after refusal to answer before a subcommittee or committee of the legislature, was informed in writing that the legislature had voted to direct him to answer the question, and was then summoned before the legislature, where the question was repeated and he was given an opportunity to answer.

Ex parte McCarthy, 29 Cal. 395, at 398;
People v. *Keeler*, 99 N.Y. 463, at 471;
Lowe v. *Summers*, 69 Mo. App. 637, at 645.

The Ohio Supreme Court in its first opinion rejected appellant's contention that her conviction constituted a denial of due process under the Fourteenth Amendment on two grounds: 1) that the appellant would not have changed her answers to the questions if she had been directed to answer; 2) that the Court was not bound by this Court's decisions in *Emspak*, *Bart* and *Quinn* because the state immunity statute "precluded appellant's right to claim the privilege", a "direction to answer thereafter could serve no substantial purpose" and was therefore "unnecessary" (R. 124).

As to the first contention: the facts in the *Emspak*, *Bart* and *Quinn* cases indicated, at least as much as they do in the instant case, that the witnesses had decided before the hearings to refuse to answer certain types of questions which they might be asked. Each of the defendants made a statement of his reasons for refusing to answer the first time he claimed the privilege, indicating his determination not to answer that or other similar questions. *Quinn* v. *United States*, at 167; *Emspak* v. *United States*, at 215-6; *Bart* v. *United States*, at 225.

Yet this Court held that these defendants were entitled to know their status with the committee at each given moment and to know whether the committee rejected or accepted their refusal as to each question. No reason appears for following a different rule in the instant case. The facts here show that the situation was much more confusing to the appellant than to Emspak, Bart or Quinn, because this appellant appeared without counsel. She was not only *not* directed to answer the questions following her claim of the privilege; in fact, she was told by the chairman of the

Commission that she *could* claim the privilege and need not answer any question which might tend to incriminate her.

In the first review of this case before the Ohio Supreme Court, one Justice dissented on this ground:

> "The commission was composed in part of able and experienced lawyers, and it hired special counsel, and yet the defendants were informed by the chairman of the commission that they had a right to rely upon their constitutional privilege against self-incrimination. * * *
>
> "Even if the chairman [of the Commission] was mistaken as to the law and the effect of the Ohio immunity statute, and Mrs. Morgan was likewise mistaken, how can it be said that she was in contempt of the commission in strictly following its direction and admonition? * * * *" (R. 137).

As to the second contention of the Ohio Supreme Court, that the existence of the immunity statute made directions to answer unnecessary, it is significant that this Court, in a case based on a similar state immunity act, pointed out that the contempt occurred when the witness persisted in his refusal to answer in the face of the state immunity act *"after being directed to testify"*. *Regan* v. *People of New York*, 349 U.S. 58, at 64, emphasis supplied.

And see the similar fact situation in *Knapp* v. *Schweitzer*, 357 U.S., at 373.

The dissenting Justice in Ohio felt that the unfairness of the contempt citation against this appellant under these facts was

> "further emphasized by the fact that in every instance when she refused to answer a question, claiming protection against self-incrimination, she was never directed

to answer the question, but the interrogator immediately proceeded with another inquiry" (R. 137).

In the *Watkins* and *Sweezy* decisions, this Court reiterated its concern that a witness before a legislative investigating committee be informed, from moment to moment, of his position in relation to the committee. The requirement that a witness be given a clear direction to answer any question which may become the subject of a contempt citation runs parallel to the requirement that a witness "have knowledge of the subject to which the interrogation is deemed pertinent." *Watkins* v. *United States*, cited *supra*, at 208-9; Frankfurter, J., at 217.

The Ohio immunity statute, as interpreted and applied by the Ohio Supreme Court to permit a witness to be punished for contempt for refusal to answer questions when the witness was not informed of the existence of an applicable immunity act, or directed to answer the questions, is repugnant to the due process clause of the Fourteenth Amendment.

C. *The Ohio immunity act is applied to the Un-American Activities Commission, although, by its terms, it can only be applied to a "committee of the General Assembly", which the Commission was not.*

Appellant was indicted and convicted under a statute punishing contempt of a "standing or select committee of the General Assembly", and the immunity act also refers to such a "committee". At each stage of these proceedings appellant has contended that the Ohio immunity act did not apply to proceedings before the Ohio Un-American Activities Commission because the said Commission did not fall within the definition of a "committee of the General Assembly".

This contention was rejected by a majority of the Ohio Supreme Court in its first opinion (R. 109-112). Justice Taft dissented on this ground at that time (R. 139-141), and reiterated his dissent when the case was again before the Ohio Supreme Court on remand from this Court (R. 149). He agreed with appellant's contention that the Ohio General Assembly consciously used the word "Commission" to designate the investigating body, instead of the word "committee", because "this 'commission' was to act after the *sine die* adjournment of the General Assembly, and the General Assembly was probably fearful that a 'committee' of the General Assembly would cease to have any existence on and after such adjournment, as apparently held by the decision of this court in *Gayman* v. *State, ex rel. Rulison, Pros. Atty.*, 79 O.S. 444, 87 N.E. 1136 (affirming 11 C.C. (N.S.) 257, 21 C.D. 59)" (R. 140).

As a result, the General Assembly made specific provisions in the act establishing the "Commission" for administering oaths, issuing subpoenas, compensating witnesses and punishing witnesses for disobeying a subpoena or refusing to testify. All of these provisions would have been unnecessary if this "Commission" had in fact been a "select committee", since existing statutes provided for these matters as to "committees of the General Assembly". Secs. 57 to 62, Gen. Code.

For these reasons, the Ohio immunity act, as interpreted by the Supreme Court of Ohio, is repugnant to the United States Constitution.

III.

Appellant Was Denied Due Process of Law by Conviction for Wilful Refusal to Answer Questions Pertinent to the Matter Under Inquiry.

A. *The evidence does not support a finding that appellant wilfully refused to answer the questions.*

Appellant was asked over forty questions by the counsel to the Commission. As to each question, appellant answered: "I regret that I cannot answer your question under the Fifth Amendment of the Constitution, because to do so would give your Committee an opportunity to incriminate me" (R. 49), or words to that effect.

Appellant thus claimed the privilege against self-incrimination as explicitly as she knew how. The record shows that the witness, John DeLong, who appeared before the Commission the day before appellant's appearance, had named appellant as an active communist and had stated that Communist Party meetings were held in her home (R. 60-62). The state criminal syndicalism law, Sec. 2923.12-2923.14, Rev. Code, and the federal Smith Act, 18 U.S.C. 2385, and Internal Security Act, 50 U.S.C. 783, make it a criminal offense to commit acts of a subversive nature, and Communist Party members have been prosecuted under these acts: *State of Ohio* v. *Kassay,* 126 O.S. 177, 184 N.E. 521; *Dennis, et al.* v. *United States,* 341 U.S. 494. In this case, Sidney Isaacs, counsel to the Commission, had himself stated the ground for the claim of the privilege as to counts 31 through 35 by his question in count 35: "Are you aware of the fact that the Civil Rights Congress has been cited as both a subversive and communist organization by the Attorney General of the United States?" (R. 5).

It is well-settled law that, under these circumstances, appellant "reasonably could fear that criminal charges might be brought against her if she admitted employment by the Communist Party or intimate knowledge of its workings * * * under such circumstances, the Constitution gives a witness the privilege of remaining silent." *Blau* v. *United States*, 340 U.S. 159, at 161.

After appellant gave her answer to the first question, she was asked how revealing her address would tend to incriminate her (Count 2, R. 2). The subsequent colloquy demonstrates that the members of the Commission, and the Commission counsel, understood that appellant sought to claim the privilege (R. 50-51).

Appellant was given no statement of her position before the Commission until she had declined to answer eleven questions, which later became counts in the indictment against her. After the twelfth question, the Chairman said:

> "Chairman Renner: Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.
>
> "Mrs. Morgan: Yes.
>
> "Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed" (R. 52).

While waiting to be called as a witness, appellant had heard similar advice given to the prior witness (R. 62).

Appellant contended before the Ohio Supreme Court that this instruction by the chairman of the Commission constituted a kind of entrapment. This "glaring feature of the record" caused one Justice of that court to dissent in part from the affirmance of appellant's conviction (R.

136-139). The majority held that "the chairman obviously misstated the law" (R. 123).

The situation in which appellant found herself is similar to that involved in *Johnson* v. *United States,* 318 U.S. 189, and in *People* v. *DeFeo,* 308 N.Y. 595. In both cases, appellants relied upon erroneous advice given to them, as witnesses, by the questioning authority. DeFeo's conviction was reversed on this ground. Johnson's was affirmed on other grounds.

> "The ruling of the court gave the petitioner the choice between testifying and refusing to testify. * * * An accused having the assurance of the court that his claim of privilege would be granted might well be entrapped if his assertion of the privilege could then be used against him. His real choice might then be quite different from his apparent one. * * * Elementary fairness requires that an accused should not be misled on that score. * * * " *Johnson* v. *United States, supra,* at 197.

Whether or not the Commission sought to entrap appellant, within the legal definition of that term, it is clear that the Chairman of the Commission acquiesced in appellant's refusal to answer the questions. Nothing was said during the hearing about the state immunity act, or its effect upon appellant's claim of the privilege.

As this Court has pointed out, fair play "is the essence of due process." *Galvan* v. *Press,* 347 U.S. 522, at 530. There can be no doubt that the action of the Commission did not constitute fair play within the meaning of the due process clause of the Fourteenth Amendment.

This is particularly true because the Commission gave no indication, during the hearing, that appellant's reason for refusing to answer the questions was rejected. No member of the Commission directed appellant to answer any ques-

tion, following her claim of the privilege, nor did the Commission's counsel give such a direction. "It was the policy of the commission not to press questions which we felt would be of an incriminating nature", according to the chairman of the Commission (R. 137).

In the absence of such directions, no wilful refusal can be found.

There is a presumption of innocence in every criminal case. A *presumptive intent* to commit a prohibited act has no place in a case such as this. See *Morissette* v. *United States*, 342 U.S. 246, at 275. Regardless of the wording of the contempt statute here, Sec. 12845 Genl. Code, it was necessary for the State to show an intention on appellant's part to defy the order of the Commission. No such showing having been made, this conviction must be reversed.

B. *The evidence does not support a finding that the questions asked were pertinent to the matter under inquiry.*

When this case came before this Court in the 1956 October Term, the conviction was vacated, and the cause remanded to the Ohio Supreme Court, for reconsideration in the light of this Court's decisions in the *Watkins* and *Sweezy* cases, cited *supra*. In those cases, this Court had carefully spelled out the requirement of pertinency in a legislative hearing in the field of "un-American activities": 1) the witness must be informed of the purpose of the hearing at which he appears; 2) he must be informed of the pertinency of the questions he is asked to a valid legislative purpose. The Court held that a contempt conviction cannot be based on refusal to answer questions unless such questions fall into the category of matters upon which the parent legislative body wishes to be informed. *Sweezy* v. *New Hampshire*, cited *supra*, 354 U.S., at 253-255; *Watkins* v. *United States*, cited *supra*, 354 U.S., at 205-6, 208-9.

In the instant case, the language of the statute establishing the Commission was appellant's only guide to the pertinency of the questions asked, since the chairman and counsel of the Commission made no statement concerning the scope of the hearing at the opening of the session at which appellant appeared, or just prior to her appearance (R. 49). It is clear that the witness, during the hearing, could not have been able to judge, with the degree of explicitness and clarity required by the due process clause, whether the questions asked were pertinent to the matter under inquiry, as set forth in the statute. See, for example, Counts 4, 13, 14, 17, 18, 28, 31, 32, 33, and 34, relating to appellant's length of residence in the County, financial and organizational problems of the Communist Party, appellant's employment record, and a petition to the United Nations published by the Civil Rights Congress (R. 2-5).

These questions, like those criticized in the *Watkins* decision, radiated outward infinitely to any topic thought to be related in some way to armed insurrection, with a probe for a depth of detail even farther removed from any basis of legislative action and involving an attempt to collect and confirm minutiae on remote topics in the past.

The trial court held that three of the questions asked appellant were not pertinent to the matter under inquiry. Counts 2, 29 and 35 (R. 87). The court did not discuss its findings that the other questions were pertinent (R. 89).

In addition, four of the five counts on which appellant was fined for refusal to answer involved questions which were purely preliminary, concerning appellant's residence, citizenship status, length of residence in Franklin County, and place of employment (Counts 1, 3, 4 and 5, R. 2). There is no indication that the Ohio General Assembly sought answers to these questions, or could use such answers in any way in its preparation of proposed legislation. (See

confession of error by United States Department of Justice in *Wollam, Simpson and McKenzie* v. *United States*, and summary reversal of contempt convictions therein, 355 U.S. 7.)

One aid to this reviewing Court, not available in the *Watkins* and *Sweezy* cases, is the action of the General Assembly, first in discontinuing the operation of the Commission after less than three years, and second, in providing that the substitute agency for investigating "un-American activities" should operate through the grand jury procedure, should not publicly seek or disclose information about individuals, but should concentrate on possible indictments for violation of the state sedition laws. (Report of the Un-American Activities Commission, State of Ohio, 1953-1954, cited *supra*, at 9, 25 and 33.)

For these reasons, it is clear that the evidence does not support a finding that the questions asked were pertinent to the matter under inquiry.

C. *The evidence supports a finding that appellant was asked only one question, and that in an area protected by the First and Fourteenth Amendments, and outside the jurisdiction of the State of Ohio.*

One of the contentions of appellant, first raised at the time of trial, was that the indictment did not state 37 separate offenses because all of the questions which were not purely preliminary (discussed *supra*), related to a single area: appellant's alleged political activities and associations (Counts 6, 8-27, 30, 31-34, and 37). The trial court agreed with this contention to the extent of acquitting appellant on two counts because of their repetitious nature (Counts 7 and 36, held to be identical with Count 6, R. 92).

This Court has recently held that, "where a witness draws the lines of refusal * * * by declining to answer ques-

tions within a generally defined area of interrogation, the prosecutor cannot multiply contempts by further questions within that area * * * " *Yates* v. *United States*, 355 U.S. 66. A similar rule must apply to legislative hearings.

This single area of questions, however, is one protected by the First and Fourteenth Amendments (discussed *supra* at point Ib), and is outside the jurisdiction of the State of Ohio (discussed *supra* at point Ia). Therefore, appellant's refusal to answer in this area did not constitute a wilful violation of Sec. 12845 Genl. Code, and the contempt conviction must be reversed.

CONCLUSION

Unlike the legislative committee in the *Watkins* case and the attorney general in the *Sweezy* case, the Commission in the instant case recommended its own demise, and the Assembly which had created it agreed to this conclusion. Like petitioner in *Watkins*, appellant herein declined to answer questions which named other persons as members of the Communist Party. Like *Sweezy*, appellant was not considered a "cooperative witness" by the investigating body. And, like him, she filed with the Commission a statement giving her reasons for refusing to answer questions concerning her political beliefs and affiliations and stating her opposition to investigations such as the one then being conducted by the Commission.* Like *Emspak*, *Bart* and *Quinn*, appellant declined to answer all questions concerning the Communist Party and her alleged relationship to it. Like *Simpson*, appellant claimed her privilege against self-incrimination in declining to answer preliminary questions

* In other respects, such as the clarity, style and tone of the writing, the statements were, of course, as different as the vocational backgrounds of the two witnesses.

concerning her address, etc. Like them, her conviction for contempt should be reversed.

The decision of the Ohio Supreme Court should be reversed with instructions to dismiss the proceedings.

Respectfully submitted,

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March 1959.

APPENDIX

An Act

To enact supplemental sections 76-28 to 76-35, inclusive, of the General Code, to provide for the establishment of a subversive activities commission in Ohio to be known as the un-American activities commission and to prescribe its powers and duties, to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. That sections 76-28 to 76-35, inclusive, of the General Code, be enacted to read as follows:

G.C. Sec. 76-28. There is hereby created an un-American activities commission in the legislative branch of the government, consisting of six members of the Senate and six members of the House of Representatives, to be appointed by the president pro tem. of the Senate and the speaker of the House of Representatives, respectively, before the sine die adjournment of the 99th General Assembly. The president pro tem. of the Senate and the speaker of the House shall be members and shall appoint as members of the commission five additional members in each house, not more than three of whom shall be members of the same political party. When a vacancy of the membership of the commission occurs it shall be filled in the same manner as the original appointments.

G.C. Sec. 76-29. The commission shall meet not later than ten days after the effective date of this act and organize by selecting from its membership, a chairman, a vice chairman, and a secretary. The members of the commission shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their official duties.

G.C. Sec. 76-30. The commission shall employ and fix the compensation of a legal director who shall em-

ploy, with the approval of the commission, such assistants, stenographers, clerks, and engage the services of such professional investigators or technical advisors as the commission may deem necessary to carry out the objects and purposes of section 76-31 of the General Code.

The salaries and all expenses incurred by the commission shall be paid from the state treasury upon the warrant of the auditor of state by voucher approved by the chairman.

G.C. Sec. 76-31. The commission shall have the power and duty

(1) To investigate, study and analyze

(a) all facts relating to the activities of persons, groups, and organizations whose membership includes persons who have as their objective or may be suspected of having as their objective the overthrow or reform of our constitutional governments by fraud, force, violence, or other unlawful means;

(b) all facts concerning persons, groups and organizations, known to be or suspected of being dominated by or giving allegiance to a foreign power or whose activities might adversely affect the contribution of this state to the national defense, the safety and security of this state, the functioning of any agency of the state or national government or the industrial potential of this state;

(c) the operation and effect of the laws of this state, of the several other states, and of the United States, which purport to outlaw and control the activities enumerated above and to recommend such additional legislation or revision of existing laws as may seem advisable and necessary;

(2) To maintain a liaison with any agency of the federal, state or local governments in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of this state or of the United States by force, violence, intimidation, sabotage or threats of the same.

In addition thereto the commission shall have such additional rights, duties and powers as may be necessary to enable it fully to exercise those specifically set forth herein and to accomplish its lawful objectives and purposes.

G.C. Sec. 76-32. In the discharge of any duties imposed by sections 76-28 to 76-35 inclusive, of the Revised Code, the chairman shall have the authority throughout the state to administer oaths, to issue subpoenas compelling the attendance of witnesses and the production of any papers, books, accounts, records, documents and testimony, and to cause the deposition of witnesses either residing in or without the state. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the commission or on the refusal of any person or officer to testify to any matters regarding which he may be lawfully interrogated, or to conform to the provisions of section 12137 of the General Code, the chairman may be authorized by a majority of the members sitting at the time the alleged offense is committed, to cause a proceeding for contempt to be filed and prosecuted in the common pleas court of any county under the provisions of sections 12138 to 12146, inclusive, of the General Code. Each witness appearing before the commission by its order, other than a state official or employee, shall receive such compensation as the commission may direct and mileage in the amounts provided by section 3014 of the General Code. Fees shall be authorized and paid after a notation has been made on the proper voucher sworn to by such witness and approved by the chairman of the commission.

G.C. Sec. 76-33. Each officer, board, commission, or department of the state government or of any local government shall make such studies as the commission may require within the limitations of its budget and shall furnish the commission all such assistance, information, records, and documents as it may require for the accomplishment of its duties. Reports and recommendations resulting from such studies shall be pre-

sented to the commission at least within sixty days prior to the regular session of the 100th General Assembly.

The commission may require the services of the bureau of code revision, judicial council, legislative reference bureau, legislative research commission, the Ohio program commission, and such other departments and agencies as it shall deem necessary to prepare a program of legislation, provided by section 76-31 of the General Code.

G.C. Sec. 76-34. The commission shall meet as often as is necessary to perform its duties, provided that in any event it shall meet at least once each quarter. Five members shall constitute a quorum, and the majority thereof shall have authority to act on matters within the jurisdiction of the commission. The commission shall formulate such rules of procedure and policies to be followed in the performance of its duties and functions as it may deem necessary and appropriate. The chairman shall have authority to appoint sub-committees, consisting of not less than three members of the commission, which shall have all of the powers conferred upon the commission itself by this act and such specific duties as may be assigned to them. A majority of each sub-committee shall constitute a quorum. The chairman of any sub-committee shall have all of the powers conferred herein upon the chairman of the commission.

G.C. Sec. 76-35. The commission shall keep minutes of each meeting or hearing and a record of all testimony and evidence submitted to it. It may make such reports, findings, and recommendations, based upon its investigations and studies, as from time to time it may deem advisable and necessary to the people, the members of the 99th General Assembly, individually or in any special session thereof, and to the governor. It shall complete its work by and render a final report of its activities and of its recommendations to the 100th General Assembly and to the governor on January 1, 1953, at which time all of its records, books,

documents, and other property shall be committed to the clerk of the Senate of the 100th General Assembly. Any member of the General Assembly or the governor shall have the right to attend any sessions of the commission, and may present his views on matters which the commission may be considering.

SECTION 2. There is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated the sum of fifty thousand dollars for the biennium beginning July 1, 1951, and ending June 30, 1953, to the commission hereby created.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 463

ANNA H. MORGAN,

Appellant,

vs.

STATE OF OHIO,

Appellee.

BRIEF FOR APPELLEE

INTRODUCTION

Counsel for the State of Ohio, appellee herein, is fully aware of the weight of authority of the recent decisions of this Honorable Court which appear to support the contentions of the appellant herein. Appellant's brief cites them, quotes from them, and analyzes them exhaustively. In fact, we can say with all candor that in the face of those decisions, it would perhaps be better for the State of Ohio to "fold its tent and silently steal away" from further arguments upon the questions presented herein.

But, the State of Ohio will not confess judgment for the appellant and quietly surrender many of the principles which that sovereign state has sought, fought for, attained, and enjoyed for the past 170 years.

Because Ohio has maintained its sovereignty as one of these United States for more than a century and a half, and stands inexorably opposed to any attempt to destroy that soverignty in any manner—whether by overt force and violence or whether by an insidious infiltration of our political, governmental, and educational institutions, we have unrelentingly pursued the prosecution of this case through all of the courts for almost six years, and will not now retreat from our position.

Our arguments herein are based upon an entirely different theory of this case from that presented in appellant's brief, and we very respectfully, but very candidly, submit that if the recent decisions of this Honorable Court, as set forth in appellant's brief, are to be construed as foreclosing the State of Ohio from further argument on the questions therein discussed, no document shall ever approach this brief in the realm of futility. It is our purpose herein to show why those decisions do not——or should not—apply to the case at bar. We have a further purpose in that there are pending in the Ohio Courts ten additional cases which are similar in nature but do not arise on the exact same fact pattern, and each of which presents one or more, but not all, of the questions presented herein. Since there is—there must be—a point at which the rights and privileges of the individual no longer supercede the powers and duties of the sovereign state—for otherwise government as we know it must crumble and fall into a state of lawlessness—we respectfully submit that such point must be determined as to the case at bar and so specifically fixed that it cannot be further extended to cover the other ten cases by "the momentum of adjudication whereby doctrine expands from case to case" as was condemned by Mr. Justice Frankfurter in *Knapp v. Schweitzer*, 357 U. S. 371.

STATEMENT OF THE CASE

Had the appellant's statement of the case as set forth in her brief been confined to the *Facts* contained therein, we could probably have stipulated our agreement therewith. However, since appellant has seen fit to embellish her statement of the case with conclusions of fact, conclusions of law, and editorial comment, we feel it incumbent upon us to present to this Honorable Court a more accurate picture of the circumstances, including the conduct of this defendant-appellant, upon which this charge of contempt of a legislative committee is based.

The Ohio Un-American Activities Commission—a select committee of the Ohio General Assembly (R. 103)—was created in 1951 by legislative action. The committee's duties included *inter alia* the duty to investigate, study and analyze

> "all facts concerning persons, groups, and organizations * * * whose activities might adversely affect the contribution of *this state* (Ohio) to the national defense, the safety and security of *this state* (Ohio), the functioning of any agency of the *state* (Ohio) * * * or the industrial potential of *this state* (Ohio);" (Emphatics and parenthetical matter added).

(The omissions are not intended to conceal references to foreign affairs or agencies of the national government, but were omitted so as not to detract from natural emphasis upon the affairs of the State of Ohio.)

The effective date of the Act creating the Commission, and much of the operation of the Commission, came after the *sine die* adjournment of the 1951 Ohio General Assembly.

This Commission held many public hearings in early 1952. Witnesses before the Commission testified concern-

ing the appellant, and concerning her membership in and activities upon behalf of the Communist party (Appellant's brief p. 10; R. 60—61). On April 1, 1952, Anna H. Morgan appeared as a witness, apparently pursuant to a subpoena. The Court does not know—for the record does not show—whether or not she had ever been employed by the State of Ohio, or whether she was or was not a member of a trade union, or whether she was not connected with any state or federal educational institution, as alleged at page 12 of appellant's brief. The State of Ohio does know that Mrs. Morgan's husband was employed by Ohio's highest state educational institution—the Ohio State University—in the capacity of Curator or similar position of the University Museum.

In stating, at page 12 of her brief, that:

> "Questioning of appellant by counsel for the Commission began, without any preliminaries (R. 49). She was sworn and gave her name."

we do not charge that appellant is attempting deliberately to mislead this Honorable Court. In order to cure a possible oversight, however, we direct the Court's attention to pages 56-59 of the record, which clearly shows that immediately when called to the stand as a witness, this appellant first presented a written statement to the Commission which, as described by the Ohio Supreme Court (R. 124), was highly abusive and vitriolic. The witness was then sworn, and in response to the first question, stated her name. She then proceeded to refuse to answer any and all further questions propounded by the Commission. Those refusals are set forth at pages 49-56 of the record. The refusals included questions as to where she resided, as to her citizenship, how long she had been a resident of the county, her present employment, her membership and activ-

ities in the Communist Party. As pointed out in appellant's brief, the Commission chairman did advise the witness that she was permitted to refuse to answer questions that might tend to incriminate her, but that she was not permitted to refuse to answer questions simply for her own convenience.

This was after the witness had already charted her own contumacious course of conduct by her own statement and by her own answers to the first twelve questions.

A total of 47 questions were asked the appellant directed toward bringing to light the subject matter discussed at meetings of the Communist Party of Franklin County, the financing of Communist activities in Franklin County, the organization of Communist activities in Franklin County, her paid status in the Communist party organization in Franklin County, employment and labor strike activities in Franklin County, and her participation in a petition charging the Government of these United States with an official and studied policy to exterminate the Negro race in the United States.

After such hearings, the record of the hearings was presented to the then Prosecuting Attorney of Franklin County, who presented it to the Grand Jury of Franklin County. The grand jury indicted this appellant on 37 counts of violation of then General Code Section 12845. As set forth at pages 1 and 2 of appellant's brief, the succeeding opinions of the courts below then followed. So that no question can be raised as to deprivation of a trial by jury by reason of appellant's repeated references to trial without a jury (i.e. Appellant's brief pps. 1 and 16), we point out that defendant-appellant expressly waived a jury under the statutes of the State of Ohio, and voluntarily chose to be tried by a Court sitting as judge and jury. The opinions

of the trial court and the appellate courts are set forth in the Record and, unlike appellant's brief, are incorporated herein by reference without editorial comment.

The remainder of the appellant's statement of the case is a maze of conclusions of fact, conclusions of law, and editorial comment which we shall, for the sake of brevity, not refute sentence by sentence. Rather, we leave it the experienced judgment of this Court to weed out and discard statements of appellant's interpretation of the beliefs and assumptions of the Commission and the various Ohio Courts. We merely remark that never have we seen an attempt to invoke the sympathy of a Court so neatly tailored to fit the former decisions of that Court.

JURISDICTION

Because this Court has entered an order herein postponing further consideration of the question of jurisdiction to the hearing of this case on the merits, we find it necessary to comment upon the statements as to jurisdiction contained at pages 2-3 of appellant's brief. We concur with appellant that if this Court has jurisdiction to hear this appeal, such jurisdiction must rest upon 28 U. S. C., Sec. 1257 (2). We would point out, however, that a necessary prerequisite of such jurisdiction is that there is drawn in question the validity of an Ohio statute on the ground of its being "repugnant to the Constitution, treaties or laws of the United States", since the Ohio Supreme Court has already pronounced its decision in favor of the validity of the statute.

Since Section 12845, Ohio General Code, which provides for a penalty for contempt of the Ohio General Assembly, etc. can hardly be repugnant to the Constitution or laws of the United States, the only possible Ohio law with which we are here concerned as to its repugnancy is the Ohio

Un-American Activities Commission Act, (Former G. C. 76-28 to 76-35, inclusive; now Revised Code 103.31 et seq.) Therefore, in order for this Court to have jurisdiction, that Ohio Act must be repugnant to the Constitution of the United States or to the laws of the United States. The only possible *law* of he United States to which the Ohio Statute in question can be repugnant, so far as we are able to determine and so far as appellant's brief alleges, is the Smith Act (Title 18, U. S. C. Section 2383). Let us test that repugnancy. The Smith Act provides that certain classes of persons—violators of the Act—"shall be ineligible for employment by the United States or any department or agency thereof for the five years next following his conviction". The Smith Act certainly did not pre-empt the field to such an extent that the State of Ohio was protected from the employment of such individuals. Ohio might have enacted a statute which stated simply: "No person convicted of a violation of the Federal Smith Act shall be eligible for employment in any agency or institution of the State of Ohio". Our query would then be:

Since the United States has protected itself but failed to protect the State of Ohio in the same regard, does the State of Ohio have the power to protect itself in the same manner?

We respectfully submit that even this Honorable Court would not deny the State of Ohio that power to protect itself in the same manner as the United States, a protection not afforded to the State by the Smith Act. If the State of Ohio had power to so protect itself, such a statute would not then have been repugnant to, but in complete harmony with, the Smith Act. How, then, without destroying legislative interpretations, can it be said that a statute auhorizing a legislaive inquiry to see if such a state enactment is

necessary is repugnant to the Smith Act? We respectfully hope that our judicial processes have not yet reached the stage where the power to protect is no longer accompanied by the power to determine whether protection is necessary.

If the Ohio statute is not repugnant to the Smith Act, then appellant must rely upon the theory that the Ohio Un-American Activities Act is repugnant to the United States Constitution. Appellant's brief sets forth (at pages 3-5) seven (7) United States Constitutional provisions which she alleges are involved. While Article I, Section 8, Sub-section (1) provides "The Congress shall have power to * * * provide for the common defense and general welfare of the United States * * *", we fail to see how a state statute directing a legislative inquiry into that state's internal affairs is in conflict with the deputy of the United States to provide for the common defense.

We submit the Ohio statute in question does not constitute a bill of attainder prohibited by Article I, Section 10, Sub-section (1), also cited by appellant. At least, such has never been alleged, nor has this or any similar act been declared as such by any court decision which has come to our attention. We fail to see any other part of this particular provision which could conceivably apply to the case at bar.

In like manner, we fail to see any relationship whatsoever between the case at bar and Article II, Section 2, Sub-section (1) of the United States Constitution which constitutes the President as the Commander in Chief of the Army and Navy of the United States and of the Militia of the several states. The fact that the framers of our Constitution assumed there would be a militia of the several states, as well as an Army and Navy of the United States, provides interesting food for thought upon the question as to how

far our Federal Constitution actually goes in depriving the several States the right—and power—to protect themselves. Be that as it may, that question is irrelevant here, and the citation of that Constitutional provision in connection with the instant case can only be looked upon as another pellet in the "shotgun approach" of the appellant in her effort to make certain that every possible straw, whether existant or conjectural, is grasped.

We do not dispute the reference to Article VI, Subsection (2) which makes the United States Constitution and the laws of the United States pursuant thereto the supreme law of the land. We hasten to point out, however, that those laws and that Constitution are not all-inclusive. We have a deep and abiding conviction that this highest Court will not lightly treat and cast aside the Tenth Amendment thereto which, with equal strength specifically proclaims:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In all earnestness, we respectfully urge the Court that *unless* the United States Constitution delegates to the United States the power to investigate, study, and analyze facts concerning activities which might adversely affect the contribution of Ohio to the national defense, the safety and security of Ohio, the functioning of any agency of the State of Ohio, or the industrial potential of Ohio, or unless the United States Constitution prohibits the State of Ohio from doing these same things, any decision which holds that Ohio does not have power to do so is, itself, repugnant to the 10th Amendment of the United States Constitution.

It is readily understandable why appellant seeks to involve the First Amendment to the United States Constitution as another pellet in her "shotgun approach". What

this Amendment, which prohibits Congress from enacting certain laws, has to do with a state prosecution in state courts for contempt of a state assembly is lost upon us unless appellant is trying to bring herself within the scope of certain recent decisions of this Court dealing with Federal cases in Federal Courts which, unless closely analyzed, would seem to support the appellant's contentions.

Appellant then cites the Fifth Amendment to the United States Constitution which, along with the Fourteenth Amendment, is actually before the Court.

Since we are now before the only tribunal which can conclusively decide the question, we believe the time has come to meet the problem head-on as to whether the Fifth Amendment of the United States Constitution applies in a state proceeding. It must be remembered that we would not deny to the appellant any privilege against self-incrimination, for we have consistently argued, and the Supreme Court of Ohio has so declared, that appellant's privilege against self-incrimination, if any, existed under Article I, Section 10, of the Ohio Constitution. The Supreme Court of Ohio has, in the instant case, specifically held that this appellant "sufficiently indicated her invocation of any rule of privilege to which she was entitled under the protection against self-incrimination afforded her by Section 10, Article I of the Constitution of Ohio".

We respectfully submit that in a long line of decisions the United States Supreme Court consistently held that the Bill of Rights of the United States Constitution when adoped "was for the protection of the individual against the federal government and its provisions were inapplicable to similar actions done by the states". *Twining v. New Jersey*, 211 U. S. 78 at 92.

In *Feldman v. United States*, 322 U. S. 487 at 490, 64 S. Ct. 1082, this Supreme Court stated:

> "The * * * Fifth * * * (Amendment) to the Constitution of the United States, prohibiting * * * compulsory self-incrimination * * * (is) directed exclusively against the activities of the Federal Government and * * * (has) no application to the states and their agencies." (Parenthetical matter added)

This principle was reaffirmed in *Adamson v. California*, 332 U. S. 46 at 51.

The application of the Fifth Amendment to the United State Constitution in a state proceeding is specifically and directly raised herein. This Court should, therefore, either reaffirm the long-established principle set forth above, or ineffectuate the same by overruling it.

The final constitutional provision invoked is the Fourteenth Amendment to the United States Constitution, which guarantees to the appellant "due process of law". This, we submit, is the only United States Constitutional provision properly invoked upon this appeal. We further submit that this Court must confine its deliberation to the question as to whether the Ohio statute is actually repugnant to the Fourteenth Amedment of the United States Constitution.

This case comes within the purview of Mr. Justice Frankfurter's statement (concurred in by Mr. Justice Harlan) in *Sweezy v. New Hampshire*, 354 U. S. 234, wherein he stated:

> "This case comes to us solely through the limited power to review the action of the states conferred upon the court by the Fourteenth Amendment."

This Court has held time and time again, as stated in *Wolf v. Colorado*, 338 U. S. 25, that:

> "The notion that the due process of law guaranteed by the Fourteenth Amendment is shorthand for the

first eight amendments of the Constitution and thereby incorporates them has been rejected by this court again and again, after impressive consideration. See e.g. *Hurtado v. California,* 110 U. S. 516; *Twining v. New Jersey,* 211 U. S. 78; *Palko v. Connecticut,* 302 U. S. 319."

Once again, then, unless a long line of cases is to be overruled, it is clearly apparent that this Court can only review the case at bar in light of the Fourteenth Amendment, and any argument herein should be confined to that single question which comes within the jurisdiction of this Court.

QUESTIONS PRESENTED

At pages 7-8 of appellant's brief, there are enumerated three (3) questions in eleven (11) branches which appellant alleges are presented to this Supreme Court in this case. We cannot dispute that these are the questions which appellant would like to litigate in this appeal, since many recent decisions of this Court on those questions are obviously in her favor. But—we ask in all sincerity—are those questions, as phrased by the appellant, actually present in the instant case. We submit they are not, as will be shown in our argument herein which responds to the appellant's questions and arguments point by point. We further submit there is only one question before this Court, which is:

"Are the statutes of the State of Ohio which created, directed, and empowered the Ohio Un-American Activities Commission to inquire into the internal affairs of the State of Ohio void as repugnant to the Fourteenth Amendment of the United States Constitution?"

ARGUMENT

Instead of presenting a sumary of argument, as set forth at pages 20-23 of appellant's brief, we shall save our summary for the conclusion hereof. Instead, we shall respond to the appellant's eleven (11) contentions point by point.

The first question presented by appellant's brief, and the first division of her argument (appellant's brief 7, 23) is devoted to the contention:

I

The Statute Establishing the Commission is not Repugnant to the United States Constitution.

A. Her first assertion in this regard is:

The State has no power to act in national and international affairs, or in the field of subversion, which Congress has fully occupied.

This is a perfect example of what counsel earlier referred to as a question perfectly tailored from whole cloth to fit the prior decisions of this Court. We do not—we cannot—contend that the State of Ohio has power to act in national or international affairs. Neither can we agree that Congress has fully occupied the field with which the State of Ohio is concerned in the instant case. Appellant's brief, at page, 23, so neatly emphasizes all references to national and internationl affairs that any court could highlight those items to the complete submersion of all references to the internal affairs of the State of Ohio. On the other hand, a court can highlight the internal affairs of the State of Ohio as contained in that same section, and logically conclude that, with incidental references to national and international affairs, the statutes in question were directed toward the internal affairs of the State of Ohio,—an area in which, as pointed out above, the Federal Smith Act left the State of Ohio wholly vulnerable—and an

area of legislation in which we find no specific delegation to or prohibition by the United States.

Thus, we stand on the threshold of American judicial history—the question to be answered being whether the power of the United States, which has been exercised to protect only itself, supercedes the retained power of the states to protect themselves in similar fashion under the Tenth Amendment to the United States Constitution.

In the final paragraph on page 23 of her brief, appellant makes the following significant statement:

> "The questions were not limited to matters of concern to the State of Ohio."

The implication is broad, and entirely accurate, that some (even many) of the questions *did* pertain to matters of concern to the State of Ohio.

We come now to appellant's discussion on page 24-25 of her brief and her attempt to correlate the Ohio Un-American Activities Commission Act with a State sedition statute struck down by this Court in *Pennsylvania v. Nelson*, 350 U. S. 497. We have carefully read the Pennsylvania Sedition Act, and the decision of this Court in the Nelson case, supra. If this appellant had been charged, tried, and convicted under Ohio's criminal syndicalism act, we would be inclined to agree that under the doctrine of the Nelson case, supra, such conviction would be the subject of reversal.

This is not such a case.

The only question before this Court—whether this contumacious witness is guilty of contempt of a legislative committee of the Ohio General Assembly—does not present the question of whether Ohio has invaded the sedition field. We are not here dealing with a state sedition statute, but merely a legislative inquiry to determine whether or not

legislative action was necessary. Ohio was not invading the field of either foreign affairs or the protection of the federal government from invasions and insurrections, as alleged at page 24 of appellant's brief.

Appellant's allegation that "The legislature of Ohio therefore could not pass a valid state sedition statute" is wholly and completely answered by the simple statement that nowhere in the record, or otherwise, does there appear any indication that Ohio was attempting or intending to pass a state sedition statute. Appellant understandably attempts to classify the act establishing the Un-American Activities Commission as a "State Sedition Statute", for if it should be so held, it would inure to appellant's benefit. We are, however, content to leave the decision as to whether this Ohio act operates as a "State Sedition Statute" to this Honorable Court.

As to appellant's second reason for declaring the act establishing the Ohio Un-American Activities Commission to be invalid (brief p. 25), we can only comment that in our experience, limited as though it may be, this is the first time that a court has been asked to accept the personal views of an individual as sufficient basis upon which to found a judicial determination. While Mr. Saxbe, Ohio's former Attorney General, is an honorable gentleman, his views are still those of one individual.

If the Ohio General Assembly could not pass any valid statutes concerning those affairs involving its own governmental, educational, and business institutions because this field was already occupied by Congress and was limited to the federal government by the federal Constitution, as alleged by appellant at page 26 of her brief, then of course the resultant legislation,—Sections 143.271 and 143.272 of the Ohio Revised Code which deal with the qualifications of

teachers in the Ohio Schools and with the qualifications of employees of the State of Ohio—will necessarily fail when tested. If appellant's contention is correct, it is indeed unfortunate that the State of Ohio no longer has the power to govern its own internal affairs which it has possessed for one and a half centuries, and which government of its internal affairs was expressly guaranteed to it by the framers of our Constitution

B. The next issue presented by appellant is:

> *"The Commission is given statutory authority to investigate the political beliefs, associations and activities of private citizens, thus abridging their constitutionally protected freedoms."*

In this phase of appellant's brief, she attempts to interject the issue of the First Amendment to the United States Constitution. When this case started some seven years ago it was a relatively simple one involving the privilege against self-incrimination, immunity, and whether appellant's refusals to testify constituted contempt. Periodically, since that time, every decision of this Court favorable to the appellant has confronted the State of Ohio with a new issue either to distinguish or overcome. Notable examples are *United States v. Bart*, 349 U. S. 219; *Emspak v. United States*, 349 U. S. 190; and *Quinn v. United States*, 349 U. S. 155, which were decided by this Court during the early appeals of the instant case in the Ohio Courts. Confronted with the problem of direction to answer, the disposition of this problem is discussed elsewhere herein.

Soon thereafter this Court decided, in *Pennsylvania v. Nelson*, 350 U. S. 497, that the Smith Act supersedes the the enforceability of a state sedition statute. With this decision we have no quarrel, but immediately this appellant sought to turn the Ohio statute providing for a legislative

inquiry into Ohio's internal affairs into a state sedition statute so as to bring this case within the scope of the Nelson case. Even the hastiest comparative reading of the Ohio act in question with the Pennsylvania Sedition Act will show the clear distinction between them.

Recently, this Court decided *Watkins v. United States*, 354 U. S. 178, and *Sweezy v. New Hampshire*, 354 U. S. 234. With these two decisions appellant apparently expects to run the State of Ohio right out of Court, since, if her interpretation thereof is accepted, all issues before the Court are conclusively settled.

Fortunately for the State of Ohio, however, the majority opinion in each of those cases points out the distinguishing factor between those cases and the instant case.

In the Watkins case, at page 182, Chief Justice Warren points out that case "is not the case of a truculent or contumacious witness who refuses to answer all questions". The majority opinion adopted the Government's own appraisal that:

> "A more complete and candid statement of his past political associations and activities (treating the Communist Party for present purposes as a mere political party) can hardly be imagined. Petitioner certainly was not attempting to conceal or withhold from the Committee his own past political associations, predilections, and preferences."

Compare this with the instant case wherein appellant, before she even knew what questions would be asked, presented a highly abusive and vitriolic statement proclaiming her refusal to answer and then proceeded to refuse to answer each and every question propounded to her.

In the Sweezy case, Chief Justice Warren again pointed out how the witness "testified at length upon his past conduct and associations". Mr. Justice Frankfurter, in his

concurring opinion, referred to the fact that Sweezy answered most of the questions propounded to him. This is a far cry from the contumacious conduct of the appellant Morgan.

The appellant now asks this Court to expand the doctrine of the *Watkins* and *Sweezy* cases to cover the blatantly truculent witness who stands guilty of the most contumacious of conducts, and forever excuse all persons who defy their sovereign state by simply refusing to answer. The State of Ohio merely asks this Court—now, while there is still time to do so—to brake "the momentum of ajudication whereby a doctrine expands from case to case".

The members of this Honorable Court are as fully aware as counsel for the State of Ohio that in the conduct of human affairs, some touch of freedom of religion, speech, association, assembly, or press is always present. This Court is equally aware that the conduct of human affairs, for such reasons alone, does not stand immune from inquiry, censure, and even punishment.

If the instant case is to be determined upon the ground that this legislative inquiry into the effect of the Activities of the Communist Party upon the internal affairs of the State of Ohio violates the First Amendment rights of an alleged member of that Communist party, then we respectfully submit that 150 years of constitutional law and history of this nation have gone for naught. Our unalterable faith in our constitutional form of government assures us such will not be the case, and we refrain from further discussion with regard thereto.

C. The third branch of appellant's attempt to establish the repugnancy of the Ohio statutes to the Constitution is as follows:

> *"The statutory requirement that the Commission 'disclose' all persons and groups having certain objec-*

> *tions serves no valid legislative purpose and pins a 'badge of disloyalty' on individuals without due process of law."*

Throughout her brief, appellant has chosen to construe certain things far and above the interpretation we would place upon them. One example is the distortion of this Court's notation of "probable jurisdiction" in *Uphaus v. Wyman*, 356 U. S. 926 in to the flat statement at page 2 of her brief:

> "This Court has jurisdiction to hear an appeal testing the constitutionality of a state statute establishing a legislative investigation committee in the field of 'subversive activities'."

Perhaps this Court does have such jurisdiction, but appellant's citation does not establish it.

The same is true of appellant's statement at page 31 of her brief which refers to "the statutory requirement that the Commission 'disclose' all persons and groups having certain objectives * * *". There is no such statutory requirement. The statute merely gave the Commission power to maintain liaison with other agencies in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of Ohio or of the United States by force, violence, intimidation, sabotage or threats of the same. Somehow, we cannot feel that the disclosure of this type of person is such a dastardly act as to be deserving of condemnation. Perhaps our views are tinged with bias based upon our own allegiance to the United States and Ohio governments, and our belief in, and support of, the constitutional forms thereof.

Be this as it may, the statement which which we take the greatest issue is appellant's statement (brief, p. 32) that:

> "Clearly a legislative body has no power to disclose the names of persons as being 'subversive' or 'disloyal'."

We are not talking now about "power to expose for the sake of exposure" or a "power to expose where the predominant result can only be an invasion of the private rights of individuals". We are talking about appellant's flat statement, *apparently her desired expansion of the views of this Court*, that "clearly, a legislative body has no power to disclose the names of persons as being 'subversive' or 'disloyal' ". If this be true—if we have reached the stage where our Congress or our State assemblies have no power to proclaim traitors in our midst,—then God help this great nation of ours. We *cannot* believe such to be the law of the land. A deprivation of power to expose for the sake of exposure we can understand, but a deprivation of the power to disclose disloyal persons under any circumstances is beyond our comprehension.

The crux of this branch of appellant's argument is that the Ohio statutes pins a "badge of disloyalty" on individuals without due process of law. As pointed out above, the entire jurisdiction of this Court in the instant case rests upon the Fourteenth Amendment to the United States Constitution, and appellant's entire argument must be based upon the contention that she has been deprived of "due process of law." We believe it would be "refreshing" to read the Fourteenth Amendment "in the naked form in which it was written," for amidst all of the covering smoke produced by appellant's arguments, one beacon blaze stands out for all to see. The Fourteenth Amendment provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are

> *citizens* of the United States and of the state wherein they reside. *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States*; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added)

The appellant claims that Ohio has attempted to abridge the privileges and immunities afforded her by the Constitution. *We charge that the appellant has deliberately and wilfully refused to bring herself within that protective mantle when she refused to answer the question:*

> *"Are you a citizen of the United States, Mrs. Morgan?"* (R. 50)

There is only one way in which the answer to that question could conceivably be self-incriminating, and that would be if the appellant were illegally within the shores of our country. *Unless Anna M. Morgan is illegally within the shores of this country, she stands convicted of contempt of the legislative committee by the words from her own mouth.*

Almost 170,000,000 Americans are proud to proclaim their American citizenship; regardless of any arguments or statements of the appellant, her contumacious refusal to acknowledge her citizenship can stem from only one source—her defiant contempt of the body asking the question.

We do not know whether a "badge of disloyalty" comes within the scope of deprivation of "life, liberty or property," but we do know that if Anna Morgan wears a badge of disloyalty, it was pinned there by her own conduct, and not by the State of Ohio.

D. Appellant contends in this branch of her argument that *"the statute is invalid because of its vague language"* and further contends, in branch E, that:

> *"The vague statutory grant of authority to the Commission made it impossible for a reviewing court to judge whether the Commission has ranged outside the area committed to it by its parent assembly, and insulated the assembly from the witness subjected to the sanction of compulsory process."*

In this regard, the State of Ohio declines to engage in a duel upon the field of semantics. If the statute in question is, in fact, guilty of "the vice of vagueness," and therefore contains "all of the evils" mentioned in the *Sweezy* and *Watkins* cases, *supra*, we can only point out that if the Ohio legislature had been able to pinpoint the specifics upon which it desired information, there would have been no need for the inquiry in the first instance. But let us assume for the purpose of argument that this "vice of vagueness" is present. It should be obvious to this Court from the record that even if the Ohio statute had been as specific as appellant would have liked to have had it, appellant's conduct would have been no different. She came with a prepared statement denouncing the "unconstitutional committee", its "persecution", the "FBI", the "American pattern of lynching negroes", preparations for national defense, our United States Attorney General, our military leaders, "a cowardly Supreme Court riding on the political coat-tails of a corrupt administration", "the Smith, McCarren and Taft-Hartley Acts", "veterans' organizations", and other American institutions.

The appellant came well-prepared to do that which she did—viz., contemptuously refuse to answer all questions of this inquiring body.

The appellant's attempt to swing the searchlight of this Court's knowledge and truth to the vagueness of the Ohio statute is a deliberate effort to swing that searchlight away from where it should be focused. Throughout seven years of litigation we have refrained from challenging the appellant in this regard. But this writer—citizen, United States of America—believes the searchlight should be focused not on the Ohio statute, but on Anna H. Morgan. Let her deliberate, wilfull, and contumacious conduct before the Commission—her contempt for the State of Ohio—be subjected to the probing rays of that searchlight, and let the American people know that while they are protected by the greatest freedoms ever known, there is still a point beyond which those freedoms do not transcend the rights of the nation as a whole and its component states.

For the reasons hereinbefore set forth, we respectfully submit the Ohio statute creating the Ohio Un-American Activities Commission is not repugnant to the federal Constitution.

II

The Ohio Immunity Act, as Interpreted by the Supreme Court of Ohio, is not repugnant to the United States Constitution.

The Ohio immunity act reads as follows:

> "Except a person who, in writing, requests permission to appear before a committee or subcommittee of the general assembly, or of either house thereof, or who, in writing, waives the rights, privileges, and immunities granted by this section, the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against such witness, nor shall a person be prosecuted or subjected to a penalty or forfeiture on account of a

> transaction, matter, or thing, concerning which he testifies, or produces evidence.' This section does not exempt a witness from the penalties for perjury."

A. The first branch of appellant's argument alleges the immunity act "displaces the right of a witness to refuse to answer on the ground of self-incrimination when the answers could become the basis for prosecution in the federal jurisdiction, which is co-terminus with state jurisdiction." In the instant case the witness invoked the Fifth Amendment of the United States Constitution to claim her privilege against self-incrimination. That such Fifth Amendment is restrictive of national action only, is too well established to require further citation of authorities in support thereof, over and above those already presented herein. We are not here confronted with a deprivation of the privilege against self-incrimination, however. The Supreme Court of Ohio in *State v. Morgan*, supra, specifically stated: "It follows that appellant sufficiently indicated her invocation of any rule of privilege to which she was entitled under the protection against self-incrimination afforded her by Section 10, Article I of the Constitution of Ohio." It has been decided by this Court time and time again that in order to supersede a witness's privilege against self-incrimination, the immunity granted need only be co-extensive with the privilege being supplanted. The latest pronouncements of this doctrine are found in *Knapp v. Schweitzer*, 357 U.S. 371, 78 S.Ct. 1302, wherein the court stated:

> "To achieve these essential ends of state government the States may find it necessary, as did New York, to require full disclosure in exchange for immunity from prosecution. This cannot be denied on the claim that such state law of immunity may expose the potential witness to prosecution under federal law. See Jack v. Kansas, 199 U.S. 372, 50 L ed 234, 26

S.Ct. 73, 4 Ann. Cas. 689. Every witness before a state grand jury investigation would feel free to block those vitally important proceedings. In construing the Fifth Amendment and its privilege against self-incrimination, one must keep in mind its essential quality as a restraint upon compulsion of testimony by the newly organized Federal Government at which the Bill of Rights was directed, and not as a general declaration of policy against compelling testimony. It is plain that the amendment can no more be thought of as restricting action by the States than as restricting the conduct of private citizens. The sole—although deeply valuable—purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man out of his own mouth."

In *Brown v. United States*, U.S., 79 S.Ct. 539, the Court at page 543 stated:

"For more than half a century it has been settled that this statute confers immunity from prosecution coextensive with the constitutional privilege against self-incrimination, and that the witness may not therefore lawfully refuse to testify. Brown v. Walker, 1896, 161 U.S. 591, 16 S.Ct. 644, 40 L.Ed. 819. The context in which the doctrine originated and the history of its reaffirmance through the years have been so recently re-examined by this Court in Ullmann v. United States, 350 U.S. 422, 76 S.Ct. 497, 100 L.Ed. 511, as to make it a needless exercise to retrace that ground here. Suffice it to repeat that Brown v. Walker has become 'part of our constitutional fabric.' 350 U.S. at page 438, 76 S.Ct. at page 506."

The remainder of this branch of appellant's argument (pages 41 to 47 of her brief) is devoted to an attempt to reverse the many long-standing decisions of this court to the effect that the immunity, in order to supplant the privilege, need be only coextensive with the privilege. We be-

lieve the best argument contra the appellant's contention is found in the Supreme Court of Ohio's interpretation of the Ohio immunity statute which is found in *State of Ohio v. Morgan*, supra, and wherein the court said at pages 540 to 542:

"The question is thus refined to whether a state immunity statute, which is admittedly sufficient to preclude prosecution under the laws of the state but which does not afford immunity from federal prosecution, supplants the right of a witness, based upon the protection guaranteed by the *state* Constitution, to refuse to answer on the ground of self-incrimination.

In the case of *United States v. Murdock*, 284 U.S. 141, 76 L.Ed. 210, 52 S.Ct., 63, 82 A.L.R., 1376, the Supreme Court of the United States said: 'This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, *and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute.* The principle established is that *full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination.*' (Emphasis ours)

In like manner the Supreme Court later said: 'The immunity from prosecution, like the privilege which it supplant, pertains to a prosecution in the same jurisdiction.' *Feldman v. United States*, 322 U.S., 487, 493, 88 L.Ed., 1408, 64 S.Ct., 1082, 154 A.L.R., 982.

And in the *Feldman case* Mr. Justice Frankfurter, speaking for the majority of the court, quoted Chief Justice Taney in *Ableman v. Booth*, 21 How., 506, 516, 16 L.Ed., 169, as follows:

"The powers of the general government, and of the state, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriated to the United States is

as far beyond the reach of the judicial process issued by a state judge of a state court, as if the line of division was traced by landmarks and monuments visible to the eye.".

Thus, the state and national governments are held by the Supreme Court of the United States to be separate sovereignties, and protection by one in granting sufficient immunity within its domain is sufficient to impose upon the witness the duty of testifying without invoking the privilege of self-incrimination, without regard to protection against the other within its separate domain. * * * *

We find no valid reason for disagreeing with the interpretations and applications by the Supreme Court of the United States, as hereinbefore set out, and conclude that the inability of the state of Ohio to provide immunity from possible federal prosecution does not defeat the immunity statute here under consideration, which grants complete immunity from prosecution by the state.

It follows that the immunity from prosecution by the state of Ohio concerning any of the matters to which appellant might have testified afforded her as much protection from self-incrimination as the Constitution of Ohio guarantees, and her refusal to answer on the basis that she might incriminate herself was an attempted invocation of a rule of privilege which, by virtue of the immunity granted, was unavailable to her."

B. The second branch of this phase of appellant's argument contends: "The immunity act, as interpreted and applied, permits a witness to be convicted of contempt for refusal to answer questions which he was not directed to answer and without instructing him that he is clothed with immunity from state prosecution." We are not unfamiliar with the cases cited by the Appellant in this part of her brief, pages 47 to 50. We cannot improve upon the reason-

ing of the Supreme Court of Ohio in the instant case, wherein the majority opinion state:

> "Thus, the witness knew or was presumed to know that under the statute her invocation of the rule of privilege against self-incrimination was a useless act under the law, since such rule of privilege had been supplanted by a statute affording her sufficient immunity from prosecution to satisfy the protection against self-incrimination guaranteed by the Constitution. Her mere refusal to answer on such a basis constituted contempt, and the interpolation of such a frivolous objection imposed no duty upon the commission to inform her of what she already knew—that she had no right to refuse to answer on such grounds.
>
> It is seen that a direction to answer in such a case would serve no substantial purpose. Although it may be true that the commission could have informed appellant that she was in contempt and subject to prosecution which might be avoided, at the sound discretion of the commission, if she chose to answer, an answer even at that point would, upon a subsequent trial, go only to show a mitigation of the contempt already committed.
>
> It is axiomatic that neither ignorance of the law nor a mistake in its interpretation affords a valid defense in a criminal prosecution. A witness cannot be heard to say in one breath that he knows enough of the law to claim the privilege against self-incrimination and in the next breath that he knows nothing of the immunity statute, or that he has misconstrued it.
>
> Appellant argues that she refused to answer because she felt she was not afforded such full and complete immunity as to deprive her of the right to refuse on the ground of self-incrimination.
>
> Regardless of whether this be interpreted to show a willful and contumacious refusal to answer, it certainly indicates a deliberate refusal to answer under a mistaken interpretation of the law.
>
> It is argued also that the *Quinn case, supra,* is in effect, a mandate by the Supreme Court of the United States to all legislative bodies, both national and state, that they must specifically direct a witness to answer

before he may be cited for contempt, and a directive to all judicial tribunals in the nation that such must be the case before a witness may be convicted of contempt.

An examination of the reasoning behind that decision compared with the reasoning behind the decisions in the instant cases shows such argument to be fallacious. We are here interpreting the effect of a *state* immunity statute (Section 60, General Code) providing not only that testimony given by a witness shall not be used in a subsequent criminal proceeding but also that the witness shall not 'be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he testifies'; and we are determining for the first time in regard to this particular statute that such protection is sufficient to supplant the rule of privilege against self-incrimination, i.e., that both the statute and the rule stem from the guaranty of protection from self-incrimination afforded by Section 10, Article I of the Constitution of Ohio, and that the scope of protection afforded by the former is sufficient to supplant the protection afforded by the latter.

This, however, is not the case with the federal immunity statute, Section 3486, Title 18, U. S. Code, which was applicable to the defendant in the *Quinn case.*'' * * * *

The fact that the Supreme Court of the United States has construed the effect of a federal statute upon a portion of the federal Constitution in a certain manner, however, in no way precludes the highest tribunal of a state from construing the effect of a similar but not identical state statute (as hereinbefore set out) upon a similar provision of the state Constitution, particularly where it is well recognized that the operation of such constitutional provisions is directed exclusively and individually to the federal and the state governments, *respectively.*

'We (the Supreme Court of the United States) have nothing to do with the interpretation of the Constitution of the state and the conformity of the enactment of the Assembly to that Constitution; those questions

are for the consideration of the courts of the state, and their decision of them is final.'

'The Fifth Amendment to the Constitution of the United States is not restrictive of state, but only of national action.' *Hunter v. City of Pittsburgh*, 207 U.S., 161, 176, 52 L.Ed., 151, 28 S.Ct., 40. See, also, *Missouri v. Dockery*, 191 U.S., 165, 48 L.Ed., 133, 24 S.Ct., 53, 63 L.R.A., 571; *Merchants' & Manufacturers' Bank v. Pennsylvania*, 167 U.S., 461, 42 L.Ed., 236, 17 S.Ct., 829; and *Gabrielli, a Minor, v. Knickerbocker*, 12 Cal. (2d), 85, 82 P. (2d), 391.

It follows that the *Quinn case*, admittedly based upon the assumption that the defendant therein had a right to refuse to give self-incriminating answers, is not controlling in any manner in the instant cases. The state advances the theory that a direction by the commission to answer was unnecessary since a statement read by appellant just prior to being sworn, and later introduced into the record of the hearing, is alone sufficient to establish the contumacious intent in her refusal to answer. In the light of what we have said, however, concerning the necessity of a direction to answer, it is neither necessary to consider this premise nor to give such statement, which is highly abusive and vitriolic, the dignity of perpetuation in this opinion.

Thus, since the immunity statute precluded appellant's right to claim the rule of privilege against self-incrimination, and Section 12845, General Code (Section 2917.42, Revised Code), makes a refusal to answer questions pertinent to the matter under inquiry a misdemeanor, appellant's refusal to answer under the claim of the rule of privilege constituted a violation, and as a direction thereafter could serve no substantial purpose, it was unnecessary.''

This Court must either accept or reject the reasoning of the Supreme Court of Ohio, so we shall not belabor the Court further on this point.

C. The third attempt of the appellant to establish the Ohio immunity act as being repugnant to the United

States Constitution is an attempt to establish that the Un-American Activities Commission was not a committee of the General Assembly.

It is, of course, a fundamental precept of jurisprudence in the State of Ohio that the syllabi of the opinions of the Ohio Supreme Court are "the law of the case". In the instant case, the Ohio Supreme Court, in interpreting a state statute, has effectively foreclosed appellant's argument contained in this branch when it announced, in Syllabus 1, State of Ohio v. Morgan, supra:

> "A commission created by statute, which is authorized to function after sine die adjournment of the General Assembly and which is composed solely of members of the General Assembly, impersonally described, and whose designated function is to investigate subversive activities and 'to recommend such additional legislation or revision of existing laws as may seem advisable and necessary' to the next General Assembly, is within the creating powers of the General Assembly under Section 8, Article II of the Constitution of Ohio, authorizing that body to obtain through committees or otherwise information affecting prospective legislation, is within the term, 'committee,' as used in that article, possesses all the attributes of a 'select committee' of the General Assembly, and is, in fact, a 'select committee' thereof within the purview of Section 12845, General Code (Section 2917.42, Revised Code)."

We therefore respectfully submit that, for the foregoing reasons, the Ohio immunity statute is in no way repugnant to the United States Constitution.

III.

Was Appellant Denied Due Process of Law by Conviction for Wilful Refusal to Answer Questions Pertinent to the Matter Under Inquiry?

In Branch A, appellant alleges "*The evidence does not support a finding that appellant wilfully refused to answer the questions.*"

The appellant's contention in this regard is summed up in her closing sentences where she alleges it was necessary for the State to show an intention on appellant's part to defy the order of the Commission, and that no such showing was made. We earnestly submit that no record could more explicitly show an intention on the part of a witness to defy the Commission. If a prepared statement announcing a refusal to answer questions, whatever they might be, followed by such refusal, is not defiance of the Commission, we know not what a defiance would be.

Quoting The Supreme Court of Ohio:

> "It is argued also that the chairman of the commission in some way contributed to appellant's misfortune by stating to her:
>
> 'Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.
>
> 'Mrs. Morgan: Yes.
>
> 'Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed.'

Although the chairman obviously misstated the law, the question is whether such misstatement affected the alleged violation by Mrs. Morgan of Section 12845, General Code.

In order to find that the chairman's statement affected her *conviction*, we must necessarily find that it

in some way affected appellant's *behavior at the hearing.* A thorough search of the record fails to disclose that this was the case.

Appellant indicated, in a prepared statement which she presented to the commission prior to the hearing, that she intended to 'claim the protection of the Fifth Amendment and remain silent before this committee,' and she refused to answer on that ground the 12 questions propounded to her *prior to the chairman's statement.* Her subsequent refusals to answer are made in the same words and manner as her prior refusals.

It is also interesting and significant to note that the chairman, at another point in the Morgan hearing, said, 'Mrs. Morgan, are you aware of the fact that your failure to answer questions—some questions of this commission, might also *tend to put you in an embarrassing situation?*'

The only hypothesis consistent with the record of this hearing is that Mrs. Morgan was well aware of what she considered to be the law and her rights thereunder, and that such statement neither mislead her nor induced her to act in any manner other than that which she deliberately chose." *State of Ohio v. Morgan,* 164 O. S., 529 at 548.

Appellant charges that "the action of the Commission did not constitute fair play within the meaning of the due process clause of the Fourteenth Amendment." We were not aware that "fair play" is a one-way street. If appellant's views are correct, the State of Ohio has been laboring under the erroneous impression that the rights and privileges of citizenship are accompanied by the duties of citizenship. If the appellant can successfully evade the duties of citizenship—the other side of the street which appellant would make one-way—by the simple expedient of refusing to acknowledge her citizenship, how then can she in the same breath claim the rights and privileges bestowed upon her only if she in fact possesses such citizenship. The rationale of the appellant's argument escapes us.

B. Here, appellant alleges:

"The evidence does not support a finding that the questions asked were pertinent to the matter under inquiry."

In this branch of her argument, appellant heavily relies upon the decision of this court in the *Watkins* and *Sweezy* cases, *supra*. As pointed out heretofore, both the Sweezy and Watkins cases involved different fact situations. The witness in each of those cases had indicated his willingness to cooperate with the Committee with the exception of certain types of questions. Each witness specifically raised the question of pertinency when he refused to answer certain questions, after having answered other questions of the Committee. Compare this with Anna Morgan's declaration, which she fulfilled completely, that she would remain silent before the Ohio Committee, not on the grounds of pertinency, but on the grounds of a defiant and contumacious refusal to answer under an alleged claim of privilege against self-incrimination. Both Watkins and Sweezy presented statements to the Committee of Congress which were temperate in nature and were in no way derogatory of the Committee. We ask this court to compare those statements with the statement of Anna Morgan found at pages 57 to 59 of the record. Her statement, on its face, is one of the most vitriolic, abusive, and derogatory statements with which this writer has ever been confronted.

We have made reference above to the type of vilification which was spread throughout her statement. There is no doubt that in the case at bar the Ohio Un-American Activities Commission was dealing with a deliberately contumacious witness, who was not objecting to, nor was she ever concerned with, the question of pertinency. At no time did

she indicate in the slightest way that she felt any question was not pertinent to the matter under inquiry. Although the appellant came to the hearing unaccompanied by counsel, the Morgan case is otherwise similar to the Barenblatt case, *Barenblatt v. United States*, 252 F. 2d, 129, wherein the court stated:

> "The record of the hearing at which Barenblatt appeared and during which the questions in controversy were asked is devoid of any objection, interposed on the ground of pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not."

Typical of the appellant's attitude before the Committee is the following excerpt from the record:

> "Question by Mr. Isaacs: Are you a citizen of the United States, Mrs. Morgan?
>
> Answer. I appeal under the Fifth Amendment.
>
> Question. You say you appeal under the Fifth Amendment?
>
> Answer. I continue to appeal under the Fifth Amendment, not to answer that question.
>
> Question. Does that mean that you refuse to answer? (fol. 105)
>
> Answer. I refuse to answer under the Fifth Amendment.
>
> Question. And by the refusal to answer under the Fifth Amendment, you say to answer would tend to incriminate you?
>
> Answer. Yes.
>
> Chairman Renner: Would you, Mrs. Morgan, be kind enough to tell the members of the Commission what the Fifth Amendment is?
>
> Mrs. Morgan: That is the Fifth Amendment that I am appealing under.
>
> Chairman Renner: Do you know what the Fifth Amendment is?
>
> Mrs. Morgan: It is the Fifth Amendment that I am appealing under, yes.

Chairman Renner: You haven't answered the question.

Mrs. Morgan: I am appealing under the Fifth Amendment."

Thus, by refusing to even claim her citizenship, we submit this witness has removed herself from the constitutional rights afforded to *citizens* of this United States.

C. In this final branch of her argument, appellant raises the question as to whether she is guilty of one contempt or of 32 contempts of the Ohio Un-American Activities Commission for her contumacious refusals to answer. The Ohio Supreme Court, construing the statutes of the State of Ohio, affirmed the conviction of this appellant on 32 counts of contempt of the Commission. While the Ohio court did not discuss in its opinion this particular phase of appellant's argument, the same argument was presented to that court, and the Ohio Supreme Court's rejection of the same under the Ohio statute is eminently clear.

After attempting to limit the 32 counts of contempt to a single contempt, the appellant then says the single contempt is not a contempt because the area of questions "is one protected by the First and Fourteenth Amendments and is outside the jurisdiction of the State of Ohio." This, of course, is merely a restatement of appellant's entire argument in the case at bar.

CONCLUSION

By way of summary, we would express our agreement with the Supreme Court of Ohio when it stated in Syllabus 2 of *State of Ohio v. Morgan*, supra, thus making it the law of the case:

"The General Assembly and its committees have a right to the testimony, pertinent to the matter under

inquiry, of each and every citizen of this state in order to obtain information affecting legislative action under consideration or in contemplation, and each citizen has a corresponding duty to give such testimony, subject only to the protection afforded him b 'he Constitution and by statute."

The record in the instant case clearly demonstrates that the appellant came prepared to wilfully, deliberately, and contumaciously refuse to answer any and all questions propounded to her by the Commission. That Commisison was a duly constituted agency of the State of Ohio, and the State of Ohio has provided a penalty for contempt thereof. Mrs. Morgan, through her truculent attitude and conduct, committed as deliberate a contempt of that Commission as could conceivably be imagined. As a result, the State of Ohio has imposed upon her a fine of $500.00. She now asks this court to reverse all of the Ohio courts who have heard and decided this case many times.

We respectfully submit she is guilty of contempt under the Ohio statutes as she has been pronounced by the Ohio courts, and therefore the decision of the Supreme Court of Ohio should be affirmed.

Respectfully submitted,

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